S. Hrg. 98-431

1983–84 MISCELLANEOUS TAX BILLS—V: S. 927, S. 1183, and H.R. 2163

HEARING

BEFORE THE

SUBCOMMITTEE ON
TAXATION AND DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 927, S. 1183, and H.R. 2163

AUGUST 3, 1983

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
27-093 O WASHINGTON : 1983

S361-6

COMMITTEE ON FINANCE

ROBERT J. DOLE, Kansas, *Chairman*

BOB PACKWOOD, Oregon
WILLIAM V. ROTH, Jr., Delaware
JOHN C. DANFORTH, Missouri
JOHN H. CHAFEE, Rhode Island
JOHN HEINZ, Pennsylvania
MALCOLM WALLOP, Wyoming
DAVID DURENBERGER, Minnesota
WILLIAM L. ARMSTRONG, Colorado
STEVEN D. SYMMS, Idaho
CHARLES E. GRASSLEY, Iowa

RUSSELL B. LONG, Louisiana
LLOYD BENTSEN, Texas
SPARK M. MATSUNAGA, Hawaii
DANIEL PATRICK MOYNIHAN, New York
MAX BAUCUS, Montana
DAVID L. BOREN, Oklahoma
BILL BRADLEY, New Jersey
GEORGE J. MITCHELL, Maine
DAVID PRYOR, Arkansas

RODERICK A. DEARMENT, *Chief Counsel and Staff Director*
MICHAEL STERN, *Minority Staff Director*

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

BOB PACKWOOD, Oregon, *Chairman*

JOHN C. DANFORTH, Missouri
JOHN H. CHAFEE, Rhode Island
MALCOLM WALLOP, Wyoming
WILLIAM L. ARMSTRONG, Colorado

SPARK M. MATSUNAGA, Hawaii
LLOYD BENTSEN, Texas
MAX BAUCUS, Montana
RUSSELL B. LONG, Louisiana

CONTENTS

ADMINISTRATION WITNESSES

Page
Woodward, Robert G., Deputy Assistant Secretary for Tax Analysis, Department of the Treasury 60
Arnett, Hon. G. Ray, Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior 101

PUBLIC WITNESSES

American Fisheries Society, Carl R. Sullivan, executive director 119
American Fishing Tackle Manufacturers Association, Thomas R. Achedler, executive vice president, accompanied by Darrell J. Lowrance, president 168
Boat/US, Michael Sciulla, director, government and public affairs 138
Breaux, Hon. John, a U.S. Representative from Louisiana 92
Copeland, John, private consultant 213
Farrell, William J., associate vice president, educational development and research, University of Iowa, Iowa City, Iowa 186
Hayden, Wes, legislative counsel, the International Association of Fish and Wildlife Agencies, Washington, D.C 114
Howard, Gene, vice president, Zebco, Tulsa, Okla 128
International Association of Fish and Wildlife Agencies, Wes Hayden, legislative counsel 114
Kamehameha Schools/Bernice P. Bishop estate, Matsuo Takabuki, trustee, accompanied by William Morris, Esq., Reid & Priest 186
National Wildlife Federation, Dr. Rudolph A. Rosen, fisheries resource specialist 144
Prosser, Norville S., executive secretary, Sport Fishing Institute, Washington, D.C 176
Rosen, Dr. Rudolph A., fisheries resource specialist, National Wildlife Federation, Washington, D.C 144
Rudney, Gabriel, senior research associate, Yale's Institution for Social and Policy Studies 186
Schedler, Thomas R., executive vice president, American Fishing Tackle Manufacturers Association, Arlington Heights, Ill., accompanied by Darrell J. Lowrance, president 168
Sciulla, Michael, director, government and public affairs, Boat/US, Alexandria, Va 138
Sport Fishing Institute, Norville S. Prosser, executive secretary 176
Storrs, David K., director of investments, Yale University, New Haven, Conn 186
Sullivan, Carl R., executive director, American Fisheries Society, Bethesda, Md 119
Takabuki, Matsuo, trustee, Kamehameha Schools-Bernice P. Bishop estate, Honoulu, Hawaii, accompanied by William Morris, Esq., Reid & Priest, Washington, D.C 204
University of Iowa, William J. Farrell, associate vice president, educational development and research 186
Woodstream Corp., Richard G. Woolworth, chairman, chief executive officer 158
Woolworth, Richard G., chairman, chief executive officer, Woodstream Corp., Lititz, Pa 158
Yale's Institution for Social and Policy Studies, Gabriel Rudney, senior research associate 186
Yale University, David K. Storrs, director of investments 186
Zebco, Gene Howard, vice president 128

ADDITIONAL INFORMATION

Page

Committee press release 1
Text of bills H.R. 2163, S. 927 and S. 1183 .... 29, 31, 35
Description of H.R. 2163, S. 927, and S. 1183 by the Joint Committee on Taxation 2
Opening statement of Senator Wallop 57
Opening statement of Senator Pryor 57
Letter from Senator Durenberger 59
Prepared statement of Robert G. Woodward 79
Prepared statement of Hon. John Breaux and Hon. Edwin Forsythe 96
Prepared statement of Hon. G. Ray Arnett 104
Prepared statement of Wes Hayden 116
Prepared statement of Carl R. Sullivan 122
Prepared statement of Gene Howard 129
Prepared statement of Michael Sciulla 139
Prepared statement of Rudolph A. Rosen 146
Prepared statement of Richard G. Woolworth 161
Prepared statement of Thomas R. Schedler 170
Prepared statement of Norville S. Prosser 178
Opening statement of Senator Matsunaga 192
Prepared statement of David K. Storrs 194
Prepared statement of William J. Farrell 199
Prepared statement of Matsuo Takabuki 206
Prepared statement of Gabriel Rudney and John Copeland 214

COMMUNICATIONS

Prepared statement of Bob Barker 255
Letter from Steven Alan Lewis 257
Letter from John A Barron 258
Prepared statement of Ron Stone 259
Letter from Robert J. Thompson 264
Prepared statement of Richard H. Lincoln 266
Prepared statement of George W. Stewart, Jr 270

1983-84 MISCELLANEOUS TAX BILLS—V:

WEDNESDAY AUGUST 3, 1983

U.S. SENATE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,
COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m. in room 215, Dirksen Senate Office Building, Hon. Bob Packwood presiding.

Present: Senators Packwood, Wallop, Grassley, Long, and Matsunaga.

[The press release announcing the hearing, the text of bills S. 927, S. 1183, and H.R. 2163, the Joint Committee on Taxation description, and the prepared statements of Senators Wallop and Pryor follow:]

[Press release]

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT SETS HEARING ON H.R. 2163, S. 927, AND S. 1183

Senator Bob Packwood, Chairman of the Subcommittee on Taxation and Debt Management, announced today that a hearing will be held on Wednesday, August 3, 1983, on the Sport Fish Restoration Revenue Act of 1983 and two additional measures.

The hearing will begin at 9:30 a.m. in room SD-215 of the Dirksen Senate Office Building.

The following legislative proposals will be considered:

H.R. 2163.—Passed by the House of Representatives on July 12, 1983. H.R. 2163 generally would expand the articles subject to the present 10 percent manufacturer's excise tax on sport fishing equipment, extend the time for paying the excise tax, reallocate the motorboat fuels tax and establish a new tax-exempt foundation, the National Fish and Wildlife Foundation.

S. 927.—Introduced by Senator Durenberger for himself and others. S. 927 generally would extend the time for payment of the manufacturer's excise tax on sport fishing equipment.

S. 1193.—Introduced by Senator Matsunaga for himself and others. S. 1193 would exempt from the tax on unrelated business income certain debt-financed income of educational institutions.

DESCRIPTION OF TAX BILLS (H.R. 2163, S. 927, and S. 1183)

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND
DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE

ON AUGUST 3, 1983

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

INTRODUCTION

The Senate Finance Subcommittee on Taxation and Debt Management has scheduled a public hearing on August 3, 1983, on three bills: H.R. 2163, S. 927, and S. 1183.

H.R. 2163, as passed by the House of Representatives on July 12, 1983 (H. Rep. No. 98-133, Part 2), would expand the articles subject to the 10-percent excise tax on fishing equipment; impose the tax at a special 3-percent rate on electric outboard boat motors; modify the purposes for which the revenues from these taxes, the taxes on motorboat fuels, and the tariff revenues attributable to fishing tackles, yachts, and pleasure craft are expended; extend the payment date for the excise tax on sport fishing equipment; provide rules governing the tax treatment of a National Fish and Wildlife Foundation proposed to be established by H.R. 2809 (as passed by the House of Representatives on July 12, 1983); and expand the types of arrows subject to the excise tax on bows and arrows.

S. 927 (introduced by Senators Durenberger, Boren, and Percy) would extend the time for payment of the present excise tax on fishing equipment, with payment generally being required on a quarterly basis.

S. 1183 (introduced by Senators Matsunaga, Long, Bentsen, Durenberger, Grassley, and Moynihan) would exempt certain debt-financed income of educational organizations from the unrelated business income provisions generally applicable to tax-exempt organizations.

The first part of the pamphlet is a summary of the bills. This is followed by a more detailed description of the bills, including present law, issues, explanation of provisions, effective dates, and estimated revenue effects, except for S. 1183 for which a revenue estimate is not available at this time.

I. SUMMARY

1. H.R. 2163—As Passed by the House of Representatives

Expansion of Excise Tax on Fishing Equipment; Modification of Sport Fish Restoration and Federal Boating Safety Programs; and Other Matters

Sport fish restoration, Federal boat safety, and Land and Water Conservation Fund programs

Present law imposes a 10-percent excise tax on the sale of fishing rods, creels, reels, and certain other articles by the manufacturer, producer, or importer of the articles (Code sec. 4161(a)). Revenues equivalent to the tax are distributed to the States in partial reimbursement of the costs they incur in approved fish restoration and management projects (the Sport Fish Restoration Program).

Present law also imposes excise taxes on gasoline and special motor fuels used in motorboats (secs. 4041, 4081, and 9503).

For fiscal years 1983-1988, up to $45 million per year of revenues from these taxes are deposited in the National Recreational Boating Safety and Facilities Improvement Fund, with the balance, if any, being deposited in the Land and Water Conservation Fund. Part of the revenue from the Boating Safety Fund is used for marine conservation programs, and part is used for recreational boating programs.

The bill would expand the articles subject to the 10-percent excise tax on fishing equipment and impose the tax at a special 3-percent rate on electric outboard boat motors. The bill also would extend the time for payment of the expanded excise tax until March 31, June 30, and September 24 for calendar quarters ending on December 31, March 31, and June 30, respectively. Tax for the quarter ending September 30 would be payable on a date prescribed by Treasury Department regulations.

Finally, the bill would modify the financing sources for the three programs and the expenditure purposes for the sport fish restoration and Boating Safety Fund programs.

The excise tax expansion would be effective with respect to articles sold after December 31, 1983; the extension of the time for payment of excise tax would be effective on October 1, 1983; and the other amendments would be effective on October 1, 1983.

Tax treatment of proposed National Fish and Wildlife Foundation

A charitable organization is exempt from Federal income tax if it meets certain specific Internal Revenue Code requirements (Code sec. 501). With certain exceptions (e.g., churches), organizations are exempt only if the Internal Revenue Service makes a determination of exempt status following submission of an application on behalf of the organization (sec. 508). Contributions to the organization for use in carrying out its exempt function generally are deductible by the donor for income, estate, and gift tax purposes (secs. 170, 2055, and 2522).

Organizations maintain their tax-exempt status and eligibility to receive tax-deductible gifts only as long as statutory criteria are satisfied. An organization otherwise exempt from tax is nevertheless taxable on its unrelated business income (secs. 511-514), and certain otherwise exempt organizations may incur liability for certain other special taxes if specified actions are taken or certain conditions exist.

H.R. 2809, as passed by the House of Representatives on July 12, 1983, would establish a new organization, the National Fish and Wildlife Foundation, to assist in carrying out the programs of the U.S. Fish and Wildlife Service. Under that bill, an amount not to exceed $1 million over a 10-year period, would be authorized to be made available from general revenues to the Foundation for administrative expenses and for a one-for-one matching program with private contributions for use in carrying out its exempt purpose.

H.R. 2809 has been referred to the Senate Committee on Environment and Public Works.

The bill would provide that the Foundation to be established by H.R 2809 (if enacted) would not be required to provide notice to the Internal Revenue Service that it is applying for recognition of its exempt status and that it is not a private foundation. The effect of this provision is that in order to be treated as a tax-exempt organization and as a public charity, the Foundation would be subject to the provisions of the Internal Revenue Code governing organizations exempt from tax under section 501(c)(3) and would maintain its exempt status so long as it satisfies the requirements for exemption under that section.

Expansion of excise tax on arrows

Under present law, an 11-percent manufacturers excise tax is imposed on the sale by a manufacturer or importer of any bow which has a draw weight of 10 pounds or more and of any arrow which measures 18 inches or more overall in length (sec. 4161(b)). Amounts equivalent to the revenues from this tax are appropriated to the Pittman-Robertson "fund" program for support of State wildlife programs.

The bill would expand the excise tax on arrows to include arrows less than 18 inches in overall length which are suitable for use with a taxable bow.

2. S. 927—Senators Durenberger, Boren, and Percy

Extension of Time for Payment of Excise Tax on Fishing Equipment

Present law imposes a 10-percent excise tax on the sale of fishing rods, creels, reels, and certain other articles by the manufacturer, producer, or importer thereof (sec. 4161(a)). This tax, like the other manufacturers excise taxes, generally is payable relatively soon after the fishing equipment is sold.

The bill would extend the time for payment of the excise tax on fishing equipment until March 31, June 30, and September 24 for calendar quarters ending on December 31, March 31, and June 30, respectively. Tax for the quarter ending September 30 would be payable on a date prescribed by Treasury Department regulations.

The provisions of the bill would apply to articles sold in the first quarter beginning after the date of enactment of the bill.

3. S. 1183—Senators Matsunaga, Long, Bentsen, Durenberger, Grassley, and Moynihan

Exception for Educational Organizations from Certain Unrelated Business Income Provisions

Under present law, any qualified pension trust or organization that is otherwise exempt from Federal income tax generally is taxed on income from trades or businesses that are unrelated to the organization's exempt purposes. Included in unrelated business income is an exempt organization's income from "debt-financed property" which is not used for its exempt function (Code sec. 514).

Debt-financed property is defined as any property which is held to produce income and with respect to which there is acquisition indebtedness at any time during the taxable year or during the 12 months prior to disposition if the property is disposed of during the taxable year. With certain exceptions, indebtedness incurred by a qualified trust as a result of the acquisition or improvement of real property is not considered acquisition indebtedness. Thus, income or gain received by a qualified trust from, or with respect to such, real property generally is not treated as income from debt-financed property.

The bill would expand the exception from the definition of acquisition indebtedness for qualified trusts to include educational organizations. Thus, income or gain received from, or with respect to, debt-financed real property owned by educational organizations would not be subject to tax as unrelated business income.

II. DESCRIPTION OF H.R. 2163—AS PASSED BY THE HOUSE OF REPRESENTATIVES

A. Expansion of Excise Tax on Fishing Equipment; Modification of Sport Fish Restoration and Federal Boating Safety Programs

1. Revenue Provisions

Present Law

Excise tax on fishing equipment

Present law imposes an excise tax equal to 10 percent of the price on the sale of fishing rods, creels, and reels, and on artificial lures, baits, and flies (including parts and accessories sold on or in connection with such articles) by a manufacturer, producer, or importer (Code sec. 4161(a)).

Revenues equivalent to the 10-percent tax on fishing equipment are distributed to the States in partial reimbursement of the costs they incur in approved fish restoration and management projects, discussed below under the explanation of the Sport Fish Restoration Program.

Time for payment of excise tax on fishing equipment

Treasury Department regulations require returns of manufacturers excise taxes, including the tax on the sale of fishing equipment, to be filed quarterly, unless more frequent filing by an individual taxpayer is required (Treas. Reg. sec. 48.6011(a)-1). Quarterly returns are due on the last day of the first month after the end of the quarter (Treas. Reg. sec. 48.6071(a)-1).

Although most Federal excise tax returns are filed on a quarterly basis, Treasury regulations generally require monthly, or semimonthly, payment of the tax (Treas. Reg. sec. 48.6302(c)-1). If a taxpayer is liable in any month for more than $100 of manufacturers excise tax and is not required to make semimonthly deposits, the taxpayer must deposit the amount on or before the last day of the next month at an authorized depository or at the Federal Reserve Bank serving the area in which the taxpayer is located.

If a taxpayer had more than $2,000 in manufacturers excise tax liability for any month of a preceding calendar quarter, such taxes must be deposited for the following quarter (regardless of amount) on a semimonthly basis. The taxes must be deposited by the ninth day following the last day of semimonthly payment period.

Table 1 shows the return requirements and payment requirements for selected Federal excise taxes.

Table 1—Schedule of Return Requirements and Payment Periods For Selected Federal Excise Taxes

Tax	Return period	Tax payment period	Float time (days)[1]
Manufacturers and retailers taxes			
Motor fuels, tires and tubes, gasoline, special fuels, sporting goods, diesel fuel, new trucks, and trailers.	Quarterly (last day of monthly after end of quarter).	At least $100 of total excise taxes—monthly on last day of succeeding month, last installment with return.	30
		More than $2,000 of total excise taxes in any month of preceding quarter—semimonthly.	9[2]
Wagering.	Monthly (15 days after end of month).	With return.	15
Tobacco products.	Semimonthly (25 days after end of period).	At time of removal unless have deferral bond—then with return.	25
Distilled spirits.	Semimonthly (30 days after end of period).	At time of removal unless have deferral bond—then with return.	30
Beer and wine.	Semimonthly (15 days (or 3 days) after end of period).	At time of removal unless have deferral bond—then with return.	15

Facilities and services taxes			
Telephone, airlines.	Quarterly (last day of 2nd month following quarter).	At least $100 of total excise taxes—monthly on last day of succeeding month, last installment with return.	30
		More than $2,000 of total excise taxes in any month of preceding quarter—3 banking days after close of semimonthly period.	3

---

[1] Float time is the delay permitted between the end of a tax payment period and the date the tax must be paid.

[2] Certain gasoline manufacturers are permitted 14 days if payment is made by wire transfer.

Taxes on motorboat fuels

Taxes at a rate of 9 cents per gallon are imposed on gasoline and special motor fuels used in motorboats. For fiscal years 1983-1988, up to $45 million per year of the revenues from these taxes are transferred from the Highway Trust Fund into the National Recreational Boating Safety and Facilities Improvement Fund (the "Boating Safety Fund"), with the balance, if any, going to the Land and Water Conservation Fund.

Tariffs on imported fishing tackle and yachts and pleasure craft

Duties at varying rates are imposed on the importation of specified articles of fishing tackle (19 U.S.C. 1202). Duties are also imposed on the importation of certain yachts and pleasure craft (19 U.S.C. 1202). Revenues from these import duties are deposited in the general fund of the Treasury.

Issues

The revenue provisions of the bill raise several issues, including the following:

First, should the list of articles of fishing equipment subject to Federal excise tax be expanded?

Second, should the rate of tax for some articles be lower than the rate applicable to sport fishing equipment generally?

Third, should the time for payment of the excise tax on sport fishing equipment be extended, and if so, should the time permitted be greater than that allowed manufacturers of other articles subject to Federal excise taxes?

Fourth, should additional Federal taxes be imposed to fund State, as contrasted to Federal, programs?

Fifth, should revenues from duties on imported yachts and pleasure craft be used to support the Sport Fish Restoration Program when similar domestically manufactured articles are not subject to a tax for support of that program?

Sixth, should revenues from the excise taxes on motorboat fuels be diverted from the Land and Water Conservation Fund and used to support other programs?

Explanation of Revenue Provisions

Excise taxes on sport fishing equipment

The bill would expand the articles subject to the 10-percent manufacturers excise tax on sport fishing equipment to include articles not presently subject to tax. The additional articles of sport fishing equipment that would be subject to the 10-percent excise tax would include, for example, fishing rods and poles (and component parts of such rods and poles) fishing lines; underwater spear guns and fishing spears; bags and baskets designed to hold fish; portable bait containers; landing nets; gaff hooks; rodholders; and other items designed for use in recreational fishing.[1] In addition, the bill would impose the tax at a special 3-percent rate on the sale of electric outboard boat motors.

---

[1] A more detailed description of the specific items subject to the expanded tax on sport fishing equipment is contained in the report of the House Committee on Ways and Means on H.R. 2163 (H. Rep. No. 98-133, Part 2, July 1, 1983).

Time for payment of excise tax on fishing equipment [2]

The bill would extend the time for paying the excise tax on sport fishing equipment. Under the bill, payment of the excise tax would be required on a quarterly basis as follows:

a. March 31, in the case of articles sold during the quarter ending the previous December 31;

b. June 30, in the case of articles sold during the quarter ending the previous March 31;

c. September 24, in the case of articles sold during the quarter ending the previous June 30; and

d. On a date prescribed in Treasury regulations in the case of articles sold during the quarter ending September 30.

The bill would not amend the time prescribed under present law for filing returns of manufacturers excise taxes or the time for payment of such taxes on articles other than fishing equipment.

Reallocation of motorboat fuels tax receipts

Revenues other than $1 million from the excise taxes on gasoline and special motor fuels used in motorboats would be reallocated between the Sport Fish Restoration Program and the Boating Safety Program. This reallocation is explained more fully in the description of the bill's fund expenditure provisions, following.

Transfer of tariff revenues on fishing tackle and yachts and pleasure craft

Under the bill, revenues from the import duties on fishing tackle and on yachts and pleasure craft would be dedicated to the Sport Fish Restoration Program, rather than being deposited in the general fund of the Treasury.

Effective Dates

The amendments expanding the articles subject to the excise tax on sport fishing equipment would be effective with respect to sales after December 31, 1983. The other revenue provisions would be effective on October 1, 1983.

Revenue Effect

It is estimated that the expansion of the excise tax on sport fishing equipment would increase gross tax receipts (available for the Sport Fish Restoration Program) by $8 million in fiscal year 1984, $12 million in fiscal years 1985 and 1986, and $13 million in fiscal years 1987 and 1988. Net fiscal year budget receipts (after income tax offsets) are estimated to be $6 million in 1984, $9 million in 1985 and 1986, and $10 million in 1987 and 1988. (See, Table 4, following, for budget effects of other revenue transfer provisions.)

---

[2] S. 927, described in Part III, contains a provision identical to that of H.R. 2163 regarding the time of payment of the excise tax on fishing equipment.

2. Fund Expenditure Provisions

Present Law and Background

Sport Fish Restoration Program

Overview

The Act of August 9, 1950 (commonly referred to as the Dingell-Johnson Act) provided for cooperation between the Federal Government and State fish and game departments. Although the Act did not establish a true trust fund, appropriations are linked to specific tax revenues. Limits are placed on State expenditures of Federally appropriated funds until the State has passed laws governing the conservation of fish and the State meets other requirements.

Financing source and expenditure purposes

To carry out fish restoration and management projects, there is authorized to be appropriated (under 16 U.S.C. sec. 777b) an amount equal to the revenue accruing from the 10-percent excise tax on certain fishing equipment (described above in Part II.A.1). The appropriation for any fiscal year continues to be available for the succeeding fiscal year. If the amount apportioned to any State is unexpended or unobligated at the end of the period for which it is available, this amount is then authorized to be made available for expenditure by the Secretary of the Interior on the research program of the U.S. Fish and Wildlife Service.[3]

Any State that wishes to receive any of these appropriations must submit to the Secretary of the Interior a program or project for fish restoration. Amounts are appropriated to reimburse States for up to 75 percent of the cost of approved projects. Approved projects include research into problems of fish management and culture, surveys and inventories of fish populations, restocking waters with food and game fishes according to natural areas, and acquisition and improvement of fish habitat that provide access for public use. The amount of assistance for these programs is determined by statutory formula.

The State allocations are apportioned as follows:

a. 40 percent in the ratio which the area of each State, including coastal and Great Lakes waters, bears to the total area of all the States; and

b. 60 percent in the ratio which the number of persons holding licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which the apportionment is made bears to the number of such persons in all the States.

---

[3] Up to eight percent of each annual appropriation is available to the Secretary of the Interior to defray expenses of administering the program and of aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or fresh waters.

No State is permitted to receive less than one percent or more than five percent of the total amount apportioned. Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands can also be appropriated limited amounts of these revenues.

National Recreational Boating Safety and Facilities Improvement Fund

Overview

The National Recreational Boating Safety and Facilities Improvement Fund ("Boating Safety Fund") was enacted on October 14, 1980 (P.L. 96-451) to provide a source of funding for Federal recreational boat safety and facilities improvement projects. Previously, all funds attributable to the excise taxes on gasoline and special motor fuels used in motorboats were transferred periodically into the Land and Water Conservation Fund.

The 1980 Act provided financing for the Boating Safety Fund for fiscal years 1981 through 1983. The Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982, P.L. 97-424) extended the Boating Safety Fund through fiscal year 1988, and increased the amounts to be transferred into the Fund (as indicated below).

Financing source and expenditure purposes

The Secretary of the Treasury is authorized to pay into the Boating Safety Fund certain amounts equivalent to the motorboat fuels taxes received on or after October 1, 1980, and before October 1, 1988. The aggregate amount transferred during each fiscal year cannot exceed $45 million for fiscal years 1983 through 1988. Additionally, the maximum amount permitted to be held by the Fund at any time cannot exceed $45 million. Any excess motorboat fuels tax receipts are transferred into the Land and Water Conservation Fund, discussed below.

Amounts in the Boating Safety Fund are available, as provided in appropriation acts, for carrying out the purposes of the Federal Boat Safety Act of 1971 (46 U.S.C. 1476). Under that Act, as amended in 1982 by the Surface Transportation Assistance Act, the Secretary of Transportation is provided with authority to contract with the States to implement and administer boating safety programs. Approval of specific elements of a State program by the Transportation Secretary is deemed to be a contractual obligation of the United States.

Under section 26 of the Federal Boat Safety Act, the Secretary of Transportation may allocate and distribute amounts from the Fund to any State that has a State recreational boating safety and facilities improvement program if that program meets certain standards and the State provides matching funds. Currently, one-third of the revenue available for allocation and distribution is to be allocated for recreational boating safety programs and two-thirds is to be allocated for recreational boating facilities improvement programs.

Available Boating Safety Fund amounts are allocated and distributed to the States for recreational boating safety programs and facilities improvement programs as follows: one-third allocated equally among eligible States; one-third allocated among eligible States who maintain an approved State vessel numbering system according to number of vessels; and one-third allocated to eligible States according to the amount of State funds expended or obligated for State boating safety programs or boating facility improvement programs.

Financial status of the Fund

Table 2 contains data on the Boating Safety Fund's actual receipts for fiscal year 1982 and as projected for fiscal years 1983 and 1984, as well as the Fund's balance at the end of each fiscal year.

Table 2.—Amounts Available for Appropriation in the National Recreational Boating Safety and Facilities Improvement Fund

[In millions of dollars]

	Fiscal Years		
	1982 actual	1983 estimate	1984 estimate
Unappropriated balance, start of year	20	20	45
Collections (offsetting receipts): Recreational Boating Safety and Facilities Act of 1980, as amended: Motorboat fuels taxes		30	15
Total available for appropriation	20	50	60
Appropriation			−15
Appropriation (proposed supplemental)		−5	
Unappropriated balance, end of year	20	45	45
Status of unfunded contract authority:			
Unfunded balance, start of year			40
Contract authority		45	45
Appropriation to liquidate contract authority		−5	−15
Unfunded balance, end of year		40	70

Source: U.S. Budget Appendix, Fiscal Year 1984.

Land and Water Conservation Fund

Overview

On September 3, 1964, Congress enacted Public Law 88-578, which established the Land and Water Conservation Fund as a separate account in the Treasury, effective January 1, 1965. Present law (16 U.S.C. 460*l-5*) provides for deposit of the following amounts in the Fund:

a. All proceeds (except those committed under other statutes), received from any disposal of surplus property and related personal property under the Federal Property and Administrative Services Act of 1949, as amended;

b. Amounts equivalent to the 9-cents-per-gallon taxes on gasoline and special motor fuels used in motorboats (to the extent these revenues exceed the amount transferred to the Boating Safety Fund);

c. Revenues from Federal recreational fee collections (since January 1, 1981);

d. Amounts necessary to make the income of the Fund not less than $900 million for fiscal year 1978 and for each fiscal year thereafter through September 30, 1989 (if appropriated); and

e. To the extent that the appropriated sums are insufficient to make the total annual income of the Fund equivalent to the amounts stated above, the amount required to cover the remainder, from miscellaneous receipts under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

The general purposes of the Land and Water Conservation Fund are (1) to provide funds for and authorize Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities, and (2) to provide funds for the Federal acquisition and development of certain lands and other areas. Monies in the Fund are available for expenditure as provided in appropriation acts. Not less than 40 percent of annual appropriations are to be used for Federal purposes; these include activities and programs of the Bureau of Land Management, the Forest Service, the Fish and Wildlife Service, and the National Park Service. The remainder of funds appropriated are apportioned among the States on the basis of statutory formula and criteria.

Financial status of the Fund

Table 3 contains data on the Land and Water Conservation Fund's actual receipts for fiscal year 1982 and estimated receipts for fiscal years 1983 and 1984, as well as the Fund's balance at the end of the fiscal years.

Table 3.—Amounts Available for Appropriation in the Land and Water Conservation Fund

[In millions of dollars]

	Fiscal years		
	1982 actual	1983 estimate	1984 estimate
Unappropriated balance, start of year	1,117.6	1,837.6	2,510.7
Collections (offsetting receipts):			
Land and Water Conservation Fund Act:			
Recreation fees	23.6	26.5	26.5
Administration's proposed legislation			−26.5
Surplus property sales	26.2	401.0	578.0
Administration's proposed legislation		−401.0	−578.0
Motorboat fuels taxes	30.3	9.0	49.0
Outer Continental Shelf Lands Act	819.9	463.5	246.5
Administration's proposed legislation		401.0	604.5
Total available for appropriation	2,017.6	2,737.6	3,410.7
Appropriation	−179.9	−226.9	−128.9
Unappropriated balance, end of year	1,837.6	2,510.7	3,281.9
Special account (Public Law 95-42, sec. 1):			
Unappropriated balance, start of year	142.6	142.6	142.6
Total available for appropriation	142.6	142.6	142.6
Appropriation			
Unappropriated balance end of year	142.6	142.6	142.6

Source: U.S. Budget Appendix, Fiscal year 1984.

Issues

The principal issues presented by the fund expenditure provisions of the bill are as follows:

First, should the allocation of revenues among the Sport Fish Restoration Program, the Boating Safety Fund, and the Land and Water Conservation Fund be modified?

Second, should these funds be established as true trust funds in the Treasury, and if so, should the operative provisions of the funds be transferred to the Trust Fund Code of the Internal Revenue Code for efficiency of administration and oversight?

Explanation of Trust Fund Provisions

Aquatic Resources Trust Fund

In general

The bill would establish a new trust fund, the Aquatic Resources Trust Fund (the "Trust Fund"), in the Internal Revenue Code, to be administered by the Secretary of the Treasury. The new Trust Fund would expand and combine funding for the present sport fish restoration and boating safety programs into a single trust fund. The Trust Fund would consist of two accounts, the Sport Fish Restoration Account and the Boating Safety Account, described below.

Amounts equivalent to the following revenues would be appropriated to finance the purposes of the new Trust Fund:

a. Revenues from the expanded excise tax on sport fishing equipment;

b. Revenues from the 9-cents-per-gallon excise taxes on gasoline and special fuels used in motorboats (other than $1 million of those revenues, which would continue to be transferred to the Land and Water Conservation Fund); and

c. Import duties on fishing equipment and on yachts and pleasure craft.

Sport Fish Restoration Account

The present Sport Fish Restoration Program would be replaced by an expanded program financed by the new Sport Fish Restoration Account. This expanded program would be financed by trust fund revenues attributable to (1) the expanded excise tax on sport fishing equipment, (2) the motorboat fuels taxes (to the extent these revenues exceed the amount transferred to the Boating Safety Account and the Land and Water Conservation Fund), and (3) import duties on fishing equipment and on yachts and pleasure craft.

The expenditure purposes established for the Sport Fish Restoration Account would be those purposes established for the present Sport Fish Restoration Program (16 U.S.C. 777a, as amended), as expanded by Title II of the bill (relating to expenditure authorizations). Expenditure purposes would be limited to those provided by law as of October 1, 1983 (i.e., the purposes provided as of the day after the date of the bill's enactment, including amendments to the program made by the bill, but not immediately effective).

Monies in the account would be available for expenditure by the Secretary of the Interior as provided in the Act of August 9, 1950, and would remain available until spent.

Boating Safety Account

The National Recreational Boating Safety and Facilities Improvement Fund would be repealed and a new, permanent, Boating Safety Account established in the Aquatic Resources Trust Fund to carry out its purposes, as amended by the bill. The Boating Safety Account would be financed by an amount equivalent to a portion of the revenues from the excise taxes on motorboat fuels. As under the present Boating Safety Fund, amounts allocated to the Account could not exceed $45 million in any fiscal year, and the uncommitted balance of the Account could not exceed $45 million at any time.

The expenditure purposes established for the Boating Safety Account would be the same as those established for the present Boating Safety Fund, as amended by Title I of the bill (relating to expenditure authorizations). Expenditure purposes would be limited to those provided by section 30 of the Federal Boat Safety Act of 1971, as of October 1, 1983 (i.e., the purposes provided as of the day after the date of enactment of the bill, including amendments to that Act made by the bill, but not immediately effective).

Specifically, monies in the Account could be expended, subject to appropriation acts, as follows:

a. Two-thirds of the amount allocated to the Account in any fiscal year (i.e., up to $30 million) for State boating safety programs; and

b. One-third of the amount allocated to the Account (i.e., up to $15 million) to the operating expenses account of the Coast Guard (including the Coast Guard Auxiliary) to defray the cost of services provided by it for recreational boating safety.

Monies in the Account would be available, subject to appropriations acts, for expenditure by the Secretary of Transportation pursuant to that Secretary's contract authority, and would remain available until spent.

Land and Water Conservation Fund

An amount not exceeding $1 million per fiscal year of the revenues attributable to the excise taxes on gasoline and special motor fuels used in motorboats would be transferred to the Land and Water Conservation Fund.[4] No other amendments would be made by the bill to that Fund.

---

[4] Thus, under the bill, amounts equivalent to the revenues derived from the excise taxes on motorboat fuels would be allocated first to the Land and Water Conservation Fund (in an amount not exceeding $1 million), and second, to the Boating Safety Account (in an amount not exceeding $45 million), with the excess being allocated first to the Sport Fish Restoration Account. By contrast, under present law, these amounts are allocated first to the Boating Safety Fund (in an amount not exceeding $45 million), with the entire excess being allocated to the Land and Water Conservation Fund.

Effective Date

The trust fund provisions of the bill would be effective on October 1, 1983.

Revenue Effect

The estimated revenues available for the Sport Fish Restoration Program under present law and under H.R. 2163 for fiscal years 1984-1988 are shown in Table 4 (below).

The Boating Safety Account would receive up to $45 million per year (through fiscal year 1988) from the taxes on motorboat fuels, and the Land and Water Conservation Fund would receive up to $1 million per year (fiscal years 1984-1988) from these taxes.

Table 4.—Estimated Revenues Available for Sport Fish Restoration Program Under Present Law and Under H.R. 2163 (as Passed by the House of Representatives), Fiscal Years 1984–88

[In millions of dollars]

Revenue source	Fiscal years—				
	1984	1985	1986	1987	1988
Present law revenue (existing 10-percent excise tax on fishing equipment)	38	41	44	49	53
Additional revenues:					
Expanded tax on sport fishing equipment	[1] 8	12	12	13	13
Transfer of import duties on fishing equipment and certain boats [2]	20	20	20	20	20
Excess motorboat fuels taxes (over that estimated going to the Boating Safety Account) [3]	[4] 21	[4] 21	[4] 21	[4] 21	[4] 23
Total available [5]	87	93	96	102	107

---

[1] Partial year; January 1, 1984, effective date.

[2] Amounts now go into the general revenues.

[3] Excess over the $45 million limit going to the Boating Safety Account and the $1 million to the Land and Water Conservation Fund. Such excess amounts now go into the Land and Water Conservation Fund.

[4] This assumes that the full $45 million per year would be transferred to the Boating Safety Account. However, if, as the Treasury Department assumes, there is only $15 million appropriated and transferred each year, then there would be an additional $30 million per year available for the Sport Fish Restoration Program.

[5] Amounts are available for appropriation for the Sport Fish Restoration Program in the year following receipt.

B. Tax Treatment of Proposed National Fish and Wildlife Foundation

1. Establishment of National Fish and Wildlife Foundation

H.R. 2809, as passed by the House of Representatives on July 12, 1983, would establish a National Fish and Wildlife Foundation ("Foundation") as a charitable, not-for-profit organization.[5] The Foundation would not be considered an agency or establishment of the United States Government.

The general purposes of the Foundation would be to encourage, accept, and manage private donations (including gifts of property) for the benefit of, or in connection with, the activities and services of the U.S. Fish and Wildlife Service, and to conduct such other activities as further the conservation and management of fish and wildlife resources of the United States, and its territories and possessions.

Under that bill, an amount not to exceed $1 million over a 10-year period, would be authorized to be made available from general revenues to the Foundation for administrative expenses and for a one-for-one matching program with private contributions for use in carrying out its exempt purpose.

H.R. 2809 has been referred to the Senate Committee on Environment and Public Works.

2. Tax Treatment of the Foundation

Present Law

Tax treatment of charitable organizations

Under present law, certain charitable, religious, and educational organizations generally are not subject to Federal income tax (sec. 501). Generally, these organizations are not enumerated individually in the statute. Rather, an organization generally must apply to the Internal Revenue Service for a determination of exempt status (sec. 508).

Organizations otherwise exempt from tax are nonetheless subject to tax on their unrelated business income (secs. 511-514). The tax on unrelated business income generally is determined as if the organization were a taxable corporation. In general, the term unrelated business income is defined as income from a trade or business which is regularly carried on by the organization and is not substantially related to the exempt purpose of the organization.

Exempt charitable organizations are of two broad types, public charities and private foundations. Private foundations are subject to special rules governing their operation and investments. For example, in the case of a private foundation, excise taxes are imposed on acts of self-dealing (sec. 4941), on failure to distribute specified minimum amounts, (sec. 4942), on excess business holdings (sec. 4943), for making investments that jeopardize the organization's charitable purpose (sec. 4944), and on certain prohibited expenditures (sec. 4945). Also, private foundations are subject to a 2-percent excise tax on net investment income.

---

[5] See H. Rep. No. 98-134, Part 2 (July 1, 1983).

Tax treatment of donations to exempt organizations

Valuation rules and types of eligible property interests

In general, donors of property are entitled to claim a deduction for the fair market value of property donated to charitable organizations, the United States, or a State or local government. The deduction is available in determining income, estate, and gift taxes (secs. 170, 2055, and 2522).

Certain types of gifts are subject to special restrictions, either as to the amount deductible or as to the types of property interests for which a deduction is permitted. For example, one of these restrictions provides that the amount of gain that would be taxed as ordinary income if the donated property were sold cannot be deducted (sec. 170(e)(1)). Additionally, a contribution of less than the donor's entire interest in the property generally does not give rise to a deduction (income, estate, or gift tax) unless the gift takes the form of an interest in a unitrust, annuity trust, or a pooled income fund (sec. 170(f)(3)). Exceptions to this partial interest rule are provided for remainder interests in farms or personal residences, gifts of undivided portions of the donor's entire interest in the property, and gifts of qualified conservation easements.

Qualified conservation easements are real property interests donated in perpetuity for—

a. The preservation of land areas for outdoor recreation by, or for the education of, the general public;

b. The protection of a natural habitat of fish, wildlife, plants, or a similar ecosystem;

c. The preservation of open space (including farmland and forest land) where such preservation is—

(1) For the scenic enjoyment of the general public, or

(2) Pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit; or

d. The preservation of an historically important land area or a certified historic structure (sec. 170(h)).

Percentage limitations on aggregate gifts

Present law also imposes percentage limitations on the income tax deduction allowable to an individual in any year for charitable contributions.

In the case of gifts to private foundations, the maximum annual deduction generally is 20 percent of the individual's adjusted gross income; in the case of gifts to other qualified charitable organizations the limitations generally are 50 percent (cash gifts) and 30 percent (capital-gain property). Corporations may deduct contributions up to 10 percent of taxable income (determined with certain modifications) in the year (sec. 170(b)(2)).

There are no percentage limitations on the amount that may be claimed as a charitable deduction in determining estate and gift tax.

Issues

The principal issue is whether a Federally chartered, tax-exempt foundation should be established for the benefit of the U.S. Fish and Wildlife Service to carry out activities similar to those activities performed by that Service which currently are financed entirely through appropriations.

If Congress should establish a National Fish and Wildlife Foundation, a second issue is whether the regular Federal tax rules governing exempt organizations should apply to that Foundation.

Explanation of Provision

The bill would provide that the Foundation to be established by H.R. 2809 (if enacted) would not be required to provide notice to the Internal Revenue Service that it is not a private foundation. The effect of this provision is that, in order to be treated as a tax-exempt organization and as a public charity, the Foundation would be subject to the provisions of the Internal Revenue Code govering organizations exempt from tax under section 501(c)(3) and would maintain its exempt status so long as it satisfies the requirements for exemption under that section.

Effective Date

The provision of the bill affecting the tax treatment of the National Fish and Wildlife Foundation would be effective on the day after the date of enactment of H.R. 2809.

Revenue Effect

It is estimated that this provision would have a negligible revenue effect.

C. Expansion of Excise Tax on Certain Arrows

Present Law

Present law imposes an 11-percent manufacturers excise tax on the sale by a manufacturer or importer of any bow which has a draw weight of 10 pounds or more and of any arrow which measures 18 inches overall or more in length (sec. 4161(b)). Revenues from this tax are appropriated to the Pittman-Robertson "fund" program for support of State wildlife programs.

Issue

The issue is whether all arrows suitable for use with taxable bows should be subject to the manufacturers excise tax on bows and arrows.

Explanation of Provision

Under the bill, the excise tax on arrows would be expanded to include arrows less than 18 inches in overall length which are suitable for use with a taxable bow.

Effective Date

This provision of the bill would be effective with respect to arrows sold after December 31, 1983.

Revenue Effect

It is estimated that this provision would increase tax revenues by a negligible amount in each year.

III. DESCRIPTION OF S. 927—SENATORS DURENBERGER, BOREN, AND PERCY

Extension of Time for Payment of Excise Tax on Fishing Equipment[1]

Present Law

Present law imposes a 10-percent excise tax on the sale of fishing rods, creels, reels, and artificial lures, baits, and flies (including parts or accessories of esuch articles sold on or in connection therewith, or with the sale thereof) by the manufacturer, producer, or importer (sec. 4161(a)).

Treasury Department regulations require returns of manufacturers excise taxes, including the tax on the sale of fishing equipment, to be filed quarterly, unless the Internal Revenue Service requires more frequent filing by an individual taxpayer (Treas. Reg. sec. 48.6011(a)-1). Quarterly returns are due on the last day of the first month after the quarter ends (Treas. Reg. sec. 48.6071(a)-1).

Although excise tax returns generally are filed on a quarterly basis, the regulations require monthly, or semimonthly, payment of the tax in certain cases (Treas. Reg. sec. 48.6302(c)-1). If an individual is liable in any month (other than the last month of a calendar quarter) for more than $100 of manufacturers excise tax and is not required to make semimonthly deposits, the individual must deposit the amount on or before the last day of the next month at an authorized depository or at the Federal Reserve Bank serving the area in which the individual is located.

If an individual had more than $2,000 in manufacturers excise tax liability for any month of a preceding calendar quarter, such taxes must be deposited for the following quarter (regardless of amount) on a semimonthly basis. The taxes must be deposited by the ninth day following the semimonthly period for which they are deposited.

Issue

The issue is whether the time for payment of excise taxes imposed on the sale of fishing equipment should be extended beyond the time generally permitted for manufacturers excise taxes.

Explanation of Provision

The bill would amend present law to require payment of the excise tax on fishing equipment on a quarterly basis, as follows:

---

[1] H.R. 2163, described in Part II, contains a provision identical to that of S. 927 regarding the time of payment of the excise tax on fishing equipment.

a. March 31, in the case of articles sold during the quarter ending the previous December 31;

b. June 30, in the case of articles sold during the quarter ending the previous March 31;

c. September 24, in the case of articles sold during the quarter ending the previous June 30; and

d. On a date prescribed in Treasury Department regulations, in the case of articles sold during the quarter ending September 30.

The bill would not change the present time for filing returns of manufacturers excise taxes or the time for payment of excise taxes on articles other than fishing equipment.

Effective Date

The provisions of the bill would apply to fishing equipment sold on or after the first day of the first calendar quarter beginning after the date of enactment of the bill.

Revenue Effect

It is estimated that the provisions of the bill would reduce overall budget receipts by a negligible amount.

IV. DESCRIPTION OF S. 1183—SENATORS MATSUNAGA, LONG, BENTSEN, DURENBERGER, GRASSLEY, AND MOYNIHAN

Exception for Educational Organizations From Certain Unrelated Business Income Provisions

Present Law

Under present law (Code sec. 511) any qualified pension trust or organization that is otherwise exempt from Federal income tax generally is taxed on income from trades or businesses that are unrelated to the organization's exempt purposes. Specific exclusions are provided for certain types of income, including rents, royalties, dividends, and interest.

Present law (sec. 514(a)) provides that an exempt organization's income from "debt-financed property" generally is subject to tax as unrelated business income in the proportion in which the property is financed by debt. Debt-financed property is defined as any property held to produce income with respect to which there is acquisition indebtedness at any time during the taxable year, or during the 12 months prior to disposition if the property is disposed of during the taxable year (sec. 514(b)). A debt constitutes acquisition indebtedness if the debt was incurred in acquiring or improving the property, or if the debt would not have been incurred but for the acquisition or improvement of the property (sec. 514(c)).

With certain exceptions, indebtedness incurred by a qualified trust as a result of the acquisition or improvement of real property is not considered "acquisition indebtedness" (sec. 514(c)(9)). Thus, income or gain received from or with respect to such debt-financed real property is not treated as income from debt-financed property. In five types of situations, the exception to the general definition of acquisition indebtedness would not apply: (1) if the acquisition price is not a fixed amount determined as of the date of acquisition; (2) if the amount of the indebtedness, or the amount payable thereon, or the time for making any payments, is dependent (in whole or in part) on the future revenues derived from the property; (3) if the property is leased by the trust to the seller or a person related to the seller; (4) if the property is acquired by a qualified trust from a person related to the plan under which the trust is formed or if such property is leased to such a related person; and (5) if the seller, a person related to the seller, or a person related to the plan provides nonrecourse financing for the transaction, and the debt is subordinate to any other indebtedness on the property or the debt bears a less than arm's-length interest rate.

Issue

The issue is whether the exception for qualified trusts from the definition of acquisition indebtedness should be expanded to include educational organizations.

Explanation of the Bill

The bill would expand the qualified trust exception from the general definition of acquisition indebtedness to include educational organizations. Thus, income or gain received from, or with respect to, debt-financed real property owned by educational organizations would not be treated as debt-financed property.

Effective Date

The provisions of the bill would be effective for taxable years beginning after December 31, 1983.

II

98TH CONGRESS
1ST SESSION

S. 927

Relating to a fishing tackle excise tax.

IN THE SENATE OF THE UNITED STATES

MARCH 24 (legislative day, MARCH 21), 1983

Mr. DURENBERGER (for himself, Mr. BOREN, and Mr. PERCY) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

Relating to a fishing tackle excise tax.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 6302 of the Internal Revenue Code of 1954 (relating to mode or time of collecting tax) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) TIME FOR PAYMENT OF MANUFACTURERS EXCISE TAX ON RODS, CREELS, ETC.—The tax imposed by section 4161(a) (relating to manufacturers excise tax on rods, creels, etc.) shall be due and payable—

"(1) in the case of articles sold during the quarter ending December 31, on March 31, "(2) in the case of articles sold during the quarter ending March 31, on June 30,

"(3) in the case of articles sold during the quarter ending June 30, on September 24, and

"(4) in the case of articles sold during the quarter ending September 30, at such time as the Secretary may by regulations prescribe.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles sold on or after the first day of the first calendar quarter beginning after the date of the enactment of this Act.

II

98TH CONGRESS
1ST SESSION

S. 1183

To amend the Internal Revenue Code of 1954 to provide that certain indebtedness incurred by educational organizations in acquiring or improving real property shall not be treated as acquisition indebtedness for purposes of the tax on unrelated business taxable income.

IN THE SENATE OF THE UNITED STATES

APRIL 28 (legislative day, APRIL 26), 1983

Mr. MATSUNAGA (for himself, Mr. LONG, Mr. BENTSEN, Mr. DURENBERGER, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to provide that certain indebtedness incurred by educational organizations in acquiring or improving real property shall not be treated as acquisition indebtedness for purposes of the tax on unrelated business taxable income.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (9) of section 514(c) of the Internal Revenue Code of 1954 (relating to unrelated debt-financed income) is amended to read as follows:

"(9) REAL PROPERTY ACQUIRED BY A QUALIFIED TRUST OR EDUCATIONAL ORGANIZATION.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'acquisition indebtedness' does not include indebtedness incurred by a qualified organization in acquiring or improving any real property.

"(B) EXCEPTIONS.—The provisions of subparagraph (A) shall not apply in any case in which—

"(i) the acquisition price is not a fixed amount determined as of the date of acquisition;

"(ii) the amount of any indebtedness or any other amount payable with respect to such indebtedness, or the time for making any payment of any such amount, is dependent, in whole or in part, upon any revenue, income, or profits derived from such real property;

"(iii) the real property is at any time after the acquisition leased by the qualified organization to the person selling such property to such organization or to any person who bears a relationship described in section 267(b) to such person;

"(iv) the real property is acquired by a qualified trust from, or is at any time after the acquisition leased by such trust to, any person who—

"(I) bears a relationship which is described in section 4975(e)(2) (C), (E), or (G) to any plan with respect to which such trust was formed, or

"(II) bears a relationship which is described in section 4975(e)(2) (F) or (H) to any person described in subclause (I); or

"(v) any person described in clause (iii) or (iv) provides the qualified organization with nonrecourse financing in connection with such transaction and such debt—

"(I) is subordinate to any other indebtedness on such property; or

"(II) bears interest at a rate which is significantly less than the rate available from any person not described in clause (iii) or (iv) at the time such indebtedness is incurred.

"(C) QUALIFIED ORGANIZATION.—The term 'qualified organization' means an organization described in section 170(b)(1)(A)(ii) and its affiliated support organizations described in section 509(a) or a qualified trust.

"(D) QUALIFIED TRUST.—For purposes of this paragraph, the term 'qualified trust' means any trust which constitutes a qualified trust under section 401.".

(b) The amendments made by this section shall apply to taxable years beginning after December 31, 1983.

II

98TH CONGRESS
1ST SESSION

H. R. 2163

IN THE SENATE OF THE UNITED STATES

JULY 13 (legislative day, JULY 11), 1983

Received; read twice and referred to the Committee on Finance

AN ACT

To amend the Federal Boat Safety Act of 1971, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AMENDMENTS TO THE FEDERAL BOAT SAFETY ACT OF 1971

SEC. 101. Section 2 of the Federal Boat Safety Act of 1971 is amended as follows:

"DECLARATION OF POLICY AND PURPOSE

"SEC. 2. It is declared to be the policy of Congress and the purpose of this Act to improve recreational boating safety and to foster greater development, use, and enjoyment of all waters of the United States by encouraging and assisting participation by the States, the boating industry, and the boating public in activities related to increasing boating safety; by authorizing the establishment of national construction and performance standards for boats and associated equipment; by creating more flexible authority governing the use of boats and equipment; and by facilitating the provision of services by the United States Coast Guard on behalf of boating safety. It is further declared to be the policy of Congress to encourage greater and continuing uniformity of boating laws and regulations among the States and the Federal Government, to encourage and assist the States in exercising their authorities in boating safety, to foster greater cooperation and assistance between the Federal Government and the States in administering and enforcing Federal and State laws and regulations pertaining to boating safety, and to equitably utilize taxes paid on fuel use in motor boats in a manner which enhances boating safety.".

SEC. 102. (a)(1) Section 3 of the Federal Boat Safety Act of 1971 is amended by striking out "and facilities improvement" in paragraph (11), by striking out paragraphs

(12) and (14), and by redesignating paragraphs (13) and (15) (and all references thereto) as paragraphs (12) and (13), respectively.

(2) Paragraph (13) of section 3 of the Federal Boat Safety Act of 1971 (as redesignated by paragraph (1) of this subsection) is amended to read as follows:

"(13) 'Fund' means the Boat Safety Account established by section 9504 of the Internal Revenue Code of 1954.".

(b)(1) Section 25 of the Federal Boat Safety Act of 1971 is amended by striking out "and facilities improvement" in the section heading, by striking out "and facility improvement" in subsection (a), and by striking out "and facilities improvement" each place it appears in such section.

(2) Section 25(a) of the Federal Boat Safety Act of 1971 is amended by striking out "may" in the second sentence and inserting in lieu thereof "shall".

(c)(1) Section 26 of the Federal Boat Safety Act of 1971 is amended by striking out "and facilities improvement" each place it appears.

(2) Section 26(a) of the Federal Boat Safety Act of 1971 is amended by striking out "may" the second place it appears and inserting in lieu thereof "shall".

(3) Subsections (c) and (d) of section 26 of the Federal Boat Safety Act of 1971 are repealed. Section 26(a)(2) of such Act is amended by striking out ", (c), or (d)".

(d)(1) Subsections (b) and (f) of section 27 of the Federal Boat Safety Act of 1971 are repealed. Subsections (c), (d), and (e) of such section (and all references thereto) are redesignated as subsections (b), (c), and (d), respectively.

(2) Subsections (b) and (c) of section 27 of the Federal Boat Safety Act of 1971 (as redesignated by paragraph (1) of this subsection) are amended by striking out "and facilities improvement" each place it appears.

(e) Section 29 of the Federal Boat Safety Act of 1971 is amended by striking out "and facilities improvement".

(f) Section 31(c) of the Federal Boat Safety Act of 1971 is amended by striking out "and facilities improvement" each place it appears.

(g) Section 32 of the Federal Boat Safety Act of 1971 is amended by striking out "and facilities improvement" each place it appears.

SEC. 103. Section 30 of the Federal Boat Safety Act of 1971 is amended to read as follows:

"AUTHORIZATION OF FUNDS FOR BOATING SAFETY

"SEC. 30. (a)(1) The Secretary is authorized to expend in each of the fiscal years 1984, 1985, 1986, 1987, and 1988, subject to such amounts as are provided in appropriations Acts for liquidation of contract authority, an amount equal to two-thirds of the amount transferred for such fiscal year to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1954. Such amount shall be allocated in accordance with section 27 of this Act and shall be available for State recreational boating safety programs in accordance with the guidelines established under paragraph (2) of this subsection. Any funds authorized to be expended for State recreational boating safety programs shall remain available until expended and shall be deemed to have been expended only if a sum equal to the total amounts authorized to be expended under this section for the fiscal year in question and all previous fiscal years have been obligated. Any funds that were previously obligated but are released by payment of a final voucher or modification of a program acceptance shall be credited to the balance of unobligated funds and shall be immediately available for expenditure.

"(2) The Secretary shall establish guidelines prescribing the purposes for which funds available under this Act for State recreational boating safety programs may be used. Such purposes may include, but are not limited to, the following:

"(A) providing facilities, equipment, and supplies for boating safety education and law enforcement, including purchase, operation, maintenance, and repair;

"(B) training personnel in skills related to boating safety and to the enforcement of boating safety laws and regulations;

"(C) providing public boating safety education, including educational programs and lectures, to the boating community and the public school system;

"(D) acquiring, constructing, or repairing public access sites used primarily by recreational boaters;

"(E) conducting boating safety inspections and accident investigations;

"(F) establishing and maintaining facilities for, and providing emergency or search-and-rescue assistance;

"(G) establishing and maintaining waterway markers and other appropriate aids to navigation; and

"(H) providing State boat numbering or titling programs.

"(b) An amount equal to one-third of the amount transferred for each of the fiscal years 1984, 1985, 1986, 1987, and 1988 to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1954 shall be available to the Secretary for expenditure out of the operating expenses account of the Coast Guard for services provided by the Coast Guard for recreational boating safety, including services provided by the Coast Guard Auxiliary. Amounts made available by this subsection shall remain available until expended.".

TITLE II—SPORT FISH RESTORATION PROGRAM

SEC. 201. (a) The Act entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes", approved August 9, 1950 (16 U.S.C. 777 et seq.), is amended as follows:

(1) The first section is amended—

(A) by inserting "(a)" after That; and

(B) by adding at the end thereof the following new subsection:

"(b) Each coastal State, to the extent practicable, shall equitably allocate the following sums between marine fish projects and freshwater fish projects in the same proportion as the estimated number of resident marine anglers and the estimated number of resident freshwater anglers, respectively, bear to the estimated number of all resident anglers in that State:

"(1) The additional sums apportioned to such State under this Act as a result of the taxes imposed by the amendment made by section 311 of the Sport Fish Restoration Revenue Act of 1983 on items not taxed under section 4161(a) of the Internal Revenue Code of 1954 before January 1, 1984.

"(2) The sums apportioned to such State under this Act that are not attributable to any tax imposed by such section 4161(a).

As used in this subsection, the term 'coastal State' means any one of the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington. The term also includes the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.".

(2) The first sentence of section 3 is amended to read as follows: "To carry out the provisions of this Act for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of the Internal Revenue Code of 1954 the amounts paid, transferred, or otherwise credited to that Account. For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section.".

(3) The first sentence of section 4 is amended to read as follows: "So much, not to exceed 6 per

centum, of each annual appropriation made in accordance with the provisions of section 3 of this Act as the Secretary of the Interior may estimate to be necessary for his expenses in the conduct of necessary investigations, administration, and the execution of this Act and for aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or freshwaters shall be deducted for that purpose, and such sum is authorized to be made available therefor until the expiration of the next succeeding fiscal year.".

(4) Section 5 is amended by striking all after the first sentence.

(5) Section 6 is amended by adding at the end thereof the following new subsection:

"(d) The Secretary of the Interior may enter into agreements to finance up to 75 per centum of the initial costs of the acquisition of lands or interests therein and the construction of structures or facilities for appropriations currently available for the purposes of this Act; and to agree to finance up to 75 per centum of the remaining costs over such a period of time as the Secretary may consider necessary. The liability of the United States in any such agreement is contingent upon the continued availability of funds for the purposes of this Act.".

(6) Section 8 is amended by inserting "(a)" before the first sentence, and by adding at the end thereof the following new subsections:

"(b)(1) Each State shall allocate 10 per centum of the funds apportioned to it for each fiscal year under section 4 of this Act for the payment of up to 75 per centum of the costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes.

"(2) So much of the funds that are allocated by a State under paragraph (1) in any fiscal year that remained unexpended or unobligated at the close of such year are authorized to be made available for the purposes described in paragraph (1) during the succeeding fiscal year, but any portion of such funds that remain unexpended or unobligated at the close of such succeeding fiscal year are authorized to be made available for expenditure by the Secretary of the Interior in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

"(c) Each State may use not to exceed 10 per centum of the funds apportioned to it under section 4 of this Act to pay up to 75 per centum of the costs of an aquatic resource education program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of such costs may not be derived from other Federal grant programs. The Secretary shall issue not later than the one hundred and twentieth day after the effective date of this subsection such regulations as he deems advisable regarding the criteria for such programs.".

(b)(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall take effect October 1, 1983.

(2) The amendments made by paragraphs (1) and (2) of subsection (a) shall take effect on October 1, 1984, and shall apply with respect to fiscal years beginning after September 30, 1984.

TITLE III—REVENUE PROVISIONS

SEC. 301. SHORT TITLE.

This title may be cited as the "Sport Fish Restoration Revenue Act of 1983".

Subtitle A—Tax on Sale of Sport Fishing Equipment

SEC. 311. TAX ON SALE OF SPORT FISHING EQUIPMENT.

(a) GENERAL RULE.—Subsection (a) of section 4161 of the Internal Revenue Code of 1954 (relating to the imposition of tax on the sale of rods, reels, etc.) is amended to read as follows:

"(a) SPORT FISHING EQUIPMENT.—

"(1) IMPOSITION OF TAX.—There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

"(2) 3-PERCENT TAX RATE FOR ELECTRIC OUTBOARD BOAT MOTORS.—In the case of an electric outboard boat motor, the rate of the tax imposed by this subsection shall be 3 percent (instead of 10 percent).

"(3) PARTS OR ACCESSORIES SOLD IN CONNECTION WITH TAXABLE SALE.—In the case of any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, such article shall be treated as including any parts or accessories of such article sold on or in connection therewith or with the sale thereof."

(b) DEFINITION OF SPORT FISHING EQUIPMENT.—Part I of subchapter D of chapter 32 of such Code is amended by adding at the end thereof the following new section:

"SEC. 4162. SPORT FISHING EQUIPMENT DEFINED.

"For purposes of this part, the term 'sport fishing equipment' means—

"(1) fishing rods and poles (and component parts therefor),

"(2) fishing reels,

"(3) fly fishing lines, and other fishing lines not over 130 pounds test,

"(4) fishing spears, spear guns, and spear tips,

"(5) items of terminal tackle, including—

"(A) leaders,

"(B) artificial lures,

"(C) artificial baits,

"(D) artificial flies,

"(E) fishing hooks smaller than size 6/0,

"(F) bobbers,

"(G) sinkers,

"(H) snaps,

"(I) drayles, and

"(J) swivels,

but not including natural bait or any item of terminal tackle designed for use and ordinarily used on fishing lines not described in paragraph (3), and

"(6) the following items of fishing supplies and accessories—

"(A) fish stringers,

"(B) creels,

"(C) tackle boxes,

"(D) bags, baskets, and other containers designed to hold fish,

"(E) portable bait containers,

"(F) fishing vests,

"(G) landing nets,

"(H) gaff hooks,

"(I) fishing hook disgorgers, and

"(J) dressing for fishing lines and artificial flies,

"(7) fishing tip-ups and tilts,

"(8) fishing rod belts, fishing rodholders, fishing harnesses, fish fighting chairs, fishing outriggers, and fishing downriggers, and

"(9) electric outboard boat motors."

(c) TIME FOR PAYMENT OF TAX.—Section 6302 of such Code (relating to mode or time of collecting tax) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) TIME FOR PAYMENT OF MANUFACTURERS EXCISE TAX ON SPORT FISHING EQUIPMENT.—The tax imposed by section 4161(a) (relating to manufacturers excise tax on sport fishing equipment) shall be due and payable—

"(1) in the case of articles sold during the quarter ending December 31, on March 31,

"(2) in the case of articles sold during the quarter ending March 31, on June 30,

"(3) in the case of articles sold during the quarter ending June 30, on September 24, and

"(4) in the case of articles sold during the quarter ending September 30, at such time as the Secretary may by regulations prescribe."

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter D of chapter 32 of such Code is amended by adding at the end thereof the following new item:

"Sec. 4162. Sport fishing equipment defined."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (d) shall apply with respect to articles sold by the manufacturer, producer, or importer after December 31, 1983.

(2) TIME FOR PAYMENT OF TAX.—The amendment made by subsection (c) shall apply with respect to

articles sold by the manufacturer, producer, or importer after September 30, 1983.

SEC. 312. ESTABLISHMENT OF AQUATIC RESOURCES TRUST FUND.

(a) GENERAL RULE.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to Trust Fund Code) is amended by adding at the end thereof the following new section:

"SEC. 9504. AQUATIC RESOURCES TRUST FUND.

"(a) CREATION OF TRUST FUND.—

"(1) IN GENERAL.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Aquatic Resources Trust Fund'.

"(2) ACCOUNTS IN TRUST FUND.—The Aquatic Resources Trust Fund shall consist of—

"(A) a Sport Fish Restoration Account, and

"(B) a Boat Safety Account.

Each such Account shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(4), or section 9602(b).

"(b) SPORT FISH RESTORATION ACCOUNT.—

"(1) TRANSFER OF CERTAIN TAXES TO ACCOUNT.—There is hereby appropriated to the Sport Fish Restoration Account amounts equivalent to the following amounts received in the Treasury on or after October 1, 1983—

"(A) the taxes imposed by section 4161(a) (relating to sport fishing equipment), and

"(B) the import duties imposed on fishing tackle under subpart B of part 5 of schedule 7 of the Tariff Schedules of the United States (19 U.S.C. 1202) and on yachts and pleasure craft under subpart D of part 6 of schedule 6 of such Schedules.

"(2) EXPENDITURES FROM ACCOUNT.—Amounts in the Sport Fish Restoration Account shall be available, as provided by appropriation Acts, to carry out the purposes of the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes', approved August 9, 1950 (as in effect on October 1, 1983).

"(c) EXPENDITURES FROM BOAT SAFETY ACCOUNT.—Amounts in the Boat Safety Account shall be available, as provided by appropriation Acts, for making expenditures before April 1, 1989, to carry out the purposes of section 30 of the Federal Boat Safety Act of 1971 (as in effect on October 1, 1983).

"(d) CROSS REFERENCE.—

"For provision transferring motorboat fuels taxes to Boat Safety Account and Sport Fish Restoration Account, see section 9503(c)(4)."

(b) TRANSFERS FROM HIGHWAY TRUST FUND.—

(1) Subparagraph (A) of section 9503(c)(4) of such Code is amended—

(A) by striking out "the National Recreational Boating Safety and Facilities Improvement Fund established by section 202 of the Recreational Boating Fund Act" in clause (i) and inserting in lieu thereof "the Boat Safety Account in the Aquatic Resources Trust Fund",

(B) by striking out "the amount in the National Recreational Boating Safety and Facilities Improvement Fund" in clause (ii) and inserting in lieu thereof "the amount in the Boat Safety Account", and

(C) by striking out "NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND" in the subparagraph heading and inserting in lieu thereof "BOAT SAFETY ACCOUNT".

(2) Paragraph (4) of section 9503(c) of such Code is amended by redesignating subparagraph (C) as subparagraph (D) and by striking out subparagraph (B) and inserting in lieu thereof the following new subparagraphs:

"(B) $1,000,000 PER YEAR OF EXCESS TRANSFERRED TO LAND AND WATER CONSERVATION FUND.—

"(i) IN GENERAL.—Any amount received in the Highway Trust Fund—

"(I) which is attributable to motorboat fuel taxes, and

"(II) which is not transferred from the Highway Trust Fund under subparagraph (A),

shall be transferred (subject to the limitation of clause (ii)) by the Secretary from the Highway Trust Fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965.

"(ii) LIMITATION.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $1,000,000.

"(C) EXCESS FUNDS TRANSFERRED TO SPORT FISH RESTORATION ACCOUNT.—Any amount received in the Highway Trust Fund—

"(i) which is attributable to motorboat fuel taxes, and "(ii) which is not transferred from the Highway Trust Fund under subparagraph (A) or (B),

shall be transferred by the Secretary from the Highway Trust Fund into the Sport Fish Restoration Account in the Aquatic Resources Trust Fund."

(c) CONFORMING AMENDMENT.—Section 202 of the Recreational Boating Fund Act of 1980 is hereby repealed.

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end thereof the following new item:

"Sec. 9504. Aquatic Resources Trust Fund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1983.

(2) BOAT SAFETY ACCOUNT TREATED AS CONTINUATION OF NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND.—The Boat Safety Account in the Aquatic Resources Trust Fund established by the amendments made by this section shall be treated for all purposes of law as the continuation of the National Recreational Boating Safety and Facilities Improvement Fund established by section 202 of the Recreational Boating Fund Act of 1980. Any reference in any law to the National Recre-

ational Boating Safety and Facilities Improvement Fund established by such section 202 shall be deemed to include (wherever appropriate) a reference to such Boat Safety Account.

Subtitle B—Tax on Certain Arrows

SEC. 321. TAX ON CERTAIN ARROWS.

(a) GENERAL RULE.—Paragraph (1) of section 4161(b) of the Internal Revenue Code of 1954 (relating to bows and arrows) is amended to read as follows:

"(1) BOWS AND ARROWS.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

"(A) of any bow which has a draw weight of 10 pounds or more, and

"(B) of any arrow which—

"(i) measures 18 inches overall or more in length, or

"(ii) measures less than 18 inches overall in length but is suitable for use with a bow described in subparagraph (A),

a tax equal to 11 percent of the price for which so sold."

(b) COORDINATION WITH TAX ON SPORT FISHING EQUIPMENT.—

(1) Subsection (b) of section 4161 of such Code is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH SUBSECTION (a).—No tax shall be imposed under this subsection with respect to any article taxable under subsection (a)."

(2) Paragraph (2) of section 4161(b) of such Code is amended by striking out "(other than a fishing reel)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to articles sold by the manufacturer, producer, or importer after December 31, 1983.

Subtitle C—Tax Treatment of National Fish and Wildlife Foundation

SEC. 331. TAX TREATMENT.

Subsections (a) and (b) of section 508 of the Internal Revenue Code of 1954 (relating to special rules with respect to section 501(c)(3) organizations) shall not apply to the National Fish and Wildlife Foundation established pursuant to the National Fish and Wildlife Foundation Establishment Act.

Passed the House of Representatives July 12, 1983.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

STATEMENT OF SENATOR MALCOLM WALLOP, BEFORE THE SENATE FINANCE COMMITTEE, SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT, AUGUST 2, 1983

Mr. Chairman, I welcome this hearing today on what is generally referred to as the Dingell-Johnson fund. As you well know, the House has completed action on this legislation and has submitted the bill to us for final action. It is not necessary for me to remind anyone here that this legislation represents much more than just the work of this Congress. Indeed, it is the culmination of hours of hard work that has bridged several years. It is the most fragile of compromises which has the popular support of the vast majority of fishing equipment manufacturers, wildlife and conservation organizations, and the State agencies and organizations which administer the funds.

The investment and dedication of all the people who have worked so very hard on this legislation and with the program itself is wrapped up in this package that will be considered this morning. It is our obligation to them to see this legislation through and to make the final product worthy of their hard work and dedication. Personally, I want to make it very clear that I feel a positive obligation to see this package through the finance committee intact and I will be very resistant to any action which would weaken this legislation or, for whatever reason, cause this compromise to be upset.

I would also like to express my concern with some baffling reports I am hearing that the administration may be reluctant to support this legislation because it specifically earmarks funds which are to flow into the various programs covered in this package. Dingell-Johnson is based on the user fee concept and it is administered not on the Federal level, but on the State level. It is, to my way of thinking, the classic example of the type of effort the administration has been striving to achieve over the past few years. It is for that reason that I can only conclude that the reports I am hearing are false, and that the administration will lend this legislation its full support. The simple fact is that this program has been highly successful, and the additional funds this bill promises are greatly needed by the States to continue to fulfill the goals established when the Dingell-Johnson program was first initiated.

As I noted earlier, this legislation is a very fragile compromise which has attempted to recognize and resolve the concerns of everyone involved. To the extent concerns have been overlooked or not dealt with in a fair and equitable manner, I will certainly do whatever I can to see those concerns addressed. But let me affirm my conviction in this area. My involvement with the Dingell-Johnson program dates back to my days in the Wyoming Legislature. I believe in the program because it is a good program. Last year we worked very hard to get this legislation included as a part of TEFRA only to see it lost during the conference. I do not intend to let this renewed opportunity escape us, and I will work very hard to see this effort through with a minimal of tampering and the greatest of hope it will be law in the very near future.

OPENING STATEMENT OF SENATOR DAVID H. PRYOR, AUGUST 3, 1983, SENATE FINANCE COMMITTEE HEARING ON H.R. 2163—THE FEDERAL BOAT SAFETY ACT AMENDMENTS OF 1983

Mr. Chairman, I appreciate the committee holding this hearing today on H.R. 2163, the Federal Boat Safety Act Amendments of 1983. Everybody supports the provisions of the Sport Fish Restoration Program because the money is used to promote fishing. This program, known as the Dingell-Johnson program, is very popular with fishermen and the fishing industry and I believe it represents a model program in how the federal government and private businesses and citizens can work together.

There is a part of the legislation, however, that is of particular concern to me. As passed by the House, H.R. 2163 expands the list of items subject to the 10 percent excise tax under Section 4161 of the Internal Revenue Code. The list of items, contained in Section 4162 of the Code, currently applies only to fishing rods, creels, reels, and artificial lures, baits and flies. H.R. 2163 expands this list to include among other things, tackle boxes. I am concerned about tackle boxes being included in the list of items subject to the 10 percent excise tax, and I have some questions I will submit to be answered in writing. This is an important industry in several parts of the country, and I think we should be very careful before levying this new tax.

Senator **PACKWOOD**. The committee will come to order.

We have three bills to hear today. We will start with Robert Woodward, the Tax Legislative Counsel for the Department of the Treasury.

Mr. Woodward, I would appreciate it very much if you would abbreviate your testimony. We have a rather long witness list. If you can abbreviate it, I will put your entire statement in the record.

Before your statement, however, I ask unanimous consent that a letter from Senator Durenberger be placed in the record prior to the start of Mr. Woodward's testimony.

ROBERT J. DOLE, KANS., CHAIRMAN

BOB PACKWOOD, OREG.
WILLIAM V. ROTH, JR., DEL.
JOHN C. DANFORTH, MO.
JOHN H. CHAFEE, R.I.
JOHN HEINZ, PA.
MALCOLM WALLOP, WYO.
DAVID DURENBERGER, MINN.
WILLIAM L. ARMSTRONG, COLO.
STEVEN D. SYMMS, IDAHO
CHARLES E. GRASSLEY, IOWA

RUSSELL B. LONG, LA.
LLOYD BENTSEN, TEX.
SPARK M. MATSUNAGA, HAWAII
DANIEL PATRICK MOYNIHAN, N.Y.
MAX BAUCUS, MONT.
DAVID L. BOREN, OKLA.
BILL BRADLEY, N.J.
GEORGE J. MITCHELL, MAINE
DAVID PRYOR, ARK.

ROBERT E. LIGHTHIZER, CHIEF COUNSEL
MICHAEL STERN, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, D.C. 20510

August 3, 1983

The Honorable Bob Packwood
United States Senator
Senate Dirksen 215
Washington, DC 20510

Dear Mr. Chairman:

I want to commend you for holding hearings promptly on HR.2163 which amends both the Federal Boat Safety Act of 1971 and the Federal Aid in Sport Fish Restoration Act of 1950. Minnesota has many avid boating and fishing enthusiasts who have a long-standing interest in the issues addressed by this legislation.

Due to Minnesota's special concern over issues of this nature, I intend to submit some additional remarks for the record after the August break. I want to address the needs and the financial role of the states in maintaining and creating more boating and fishing areas. The dedication of user fees to specific trust funds is a matter that I would like to explore in greater detail as well. Finally, the impact of the proposed excise tax expansion on U.S. manufacturers' ability to compete with imports is also of concern.

I do want to share my thoughts today on the timing of the collection of the excise tax on fishing tackle. Both S.927, which I sponsored, and HR.2163 would establish a more reasonable collection schedule for this voluntarily supported tax. A slightly deferred collection schedule as proposed in these bills would be of great assistance to the many small businesses involved in the manufacture of fishing tackle items. I urge the Committee members to support a change of this nature whether we expand the coverage of the excise tax or not.

Thank you for your consideration, Mr. Chairman.

Sincerely,

Dave Durenberger
United States Senator

DD:sl

Senator PACKWOOD. Mr. Woodward, go right ahead.

STATEMENT OF ROBERT WOODWARD, ACTING TAX LEGISLATIVE COUNSEL, DEPARTMENT OF THE TREASURY, WASHINGTON, D.C.

Mr. WOODWARD. Thank you, Mr. Chairman.

I am pleased to have the opportunity to present the views of the Treasury Department on the bills before the subcommittee this morning. I will first discuss H.R. 2163, which would increase the excise tax revenues earmarked for the Dingell-Johnson sport fish restoration management program, extend the time for paying the sport fishing equipment excise tax and provide special tax rules for the National Fish and Wildlife Foundation; and S. 927, which also would extend the time for paying the sport fishing equipment excise tax.

Titles I and II of H.R. 2163 amend the expenditure guidelines of the Federal boating safety and Dingell-Johnson programs. The Treasury Department defers to the Departments of the Interior and Transportation on these aspects of the bills.

Title III, Subtitle A of H.R. 2163 would amend the excise tax on sport fishing equipment and expand the Dingell-Johnson program significantly. As a procedural matter, title III, subtitle A of the bill, would formally set up a new trust fund, The Aquatic Resources Trust Fund, in subtitle I of the Internal Revenue Code. The Aquatic Resources Trust Fund will consist of two accounts, the sport fish restoration account and the boating safety account, into which the respective revenues earmarked for the Dingell-Johnson sport fishing program and the Federal boating safety program will be transferred.

Subtitle A of title III of the bill would make three changes that would greatly increase the revenue to be deposited in the sport fish restoration account to be used for the Dingell-Johnson program. First, the bill would increase the amount of revenues derived from the sport fishing equipment excise tax by expanding the types of items currently subject to the tax. A tax of 10 percent would be levied on the sale by the manufacturer or importer of all sport fishing equipment, including parts or accessories of such equipment. In addition, the bill would impose a tax at a special 3-percent rate on the sale of electric outboard boat motors. The bill defines the term "sport fishing equipment" by providing a specific list containing most of the items used primarily in sport fishing.

Second, the bill would transfer the revenues from the import duties on fishing tackle, yachts and pleasure craft to the Dingell-Johnson program. Third, the bill would transfer the revenues from the excise tax on gasoline and special motor fuels used in motorboats, to the extent that such revenues exceed the amount required to be transferred to the boating safety account—which has a $45 million annual and total fund limitation—plus $1 million, to the sport fish restoration account, to be used for the Dingell-Johnson program, rather than transferring such funds to the land and water conservation fund, as provided by present law. The first $1 million of motorboat fuels tax revenues in excess of the amount required to be transferred to the boating safety account would continue to be transferred to the land and water conservation fund.

H.R. 2163 also would extend the time for paying the excise tax on sport fishing equipment. Under the bill, payment of these excise taxes would be required on a quarterly basis rather than a monthly or semimonthly payment schedule generally required for Federal excise taxes under current law. This is the same change that would be made by S. 927. The only difference between the two bills in this regard is the effective date.

The administration does not support H.R. 2163 in its present form. As previously discussed, title III, subtitle A of the bill makes three changes to increase the revenue earmarked for the Dingell-Johnson program. The administration generally does support the expansion of the sport fishing equipment excise tax to cover the majority of items primarily used in sport fishing, and the earmarking of the import duties on fishing tackle, yachts and pleasure craft for the Dingell-Johnson Program.

The administration opposes, however, the diversion of revenues from the excise taxes on gasoline and special motor fuels used in motorboats to the Dingell-Johnson program. Transferring these revenues to the program would have the effect of increasing the Federal deficit by over $50 million annually.

Senator **Matsunaga**. Why?

Mr. **Woodward**. Because the funds are now going into the land and water conservation fund, which is not being expended.

Senator **Matsunaga**. OK.

Senator **Packwood**. Well, let me ask you this: You are transferring funds from the land and water conservation fund that you are supposed to be spending and you are not spending them. How does the transfer to this fund, unless you spend the fund, increase the deficit?

Mr. **Woodward**. The difference is that there is no standing appropriation, as I understand it, for the land and water conservation fund. Congress has determined that those funds should not automatically be forced out. The Dingell-Johnson program, on the other hand, would force those funds out.

This bill would substantially increase the revenues going into the Dingell-Johnson program, which have been increasing as the excise tax revenues under existing law have increased, adding an additional $13 million or $14 million of revenues from the expansion of the excise taxes, plus an additional approximate $20 million annually from the import duties. The administration believes that those are sufficient increases in Federal support for the sport fishing program, without the additional $50 million annually that would be provided by the motorboat fuels excise tax revenues.

The Treasury Department also opposes the extension of time for the payment of the sport fishing excise tax provided in these bills. We have testified on this subject previously, and the basis for our position is set forth in our written statement. We understand the argument in support of this extension time for payment is that there are special considerations in this particular industry. We believe that other industries would find special considerations that would apply in their cases as well, and we do not think the precedent should be set of tailoring the time for payment of the Federal excise taxes according to business practices in a particular affected industry.

Title III, subtitle B of the bill would expand the excise tax on certain arrows. We have no objection to that provision of the bill.

Title III, subtitle C of H.R. 2163 deals with the tax treatment of the National Fish and Wildlife Foundation, relieving that Foundation from filing requirements with the IRS, but otherwise leaving the Foundation subject to the normal rules applicable to charitable contributions and tax exemptions. The Treasury Department has no objection to that provision of the bill.

I will now turn to S. 1183, which would provide an exemption from the unrelated business income tax for debt financed real property investments of schools. Generally, exempt organizations are not taxed on income earned on investments. However, a tax is imposed on income earned by an exempt organization from business activities unrelated to its exempt purpose. Exceptions to this tax on unrelated business income are provided for certain traditional types of investment income—rents, royalties, dividends, and interest—unless the acquisition or improvement of the property producing the income is financed by debt. Subject to limited exceptions, a share of income from debt-financed property proportional to the ratio of the debt on the property to the adjusted basis of the property is treated as income from an unrelated trade or business.

The original rules relating to debt-financed property were enacted in 1950, in response to abusive sale-leaseback transactions between tax-exempt organizations and taxable owners of active businesses.

Unfortunately, the 1950 legislation proved to be insufficient as new forms of transactions involving leveraged investments quickly developed. In response to these new transactions, the unrelated business income tax rules were strengthened in 1969, by subjecting to tax in the hands of tax-exempt organizations the income received from all kinds of debt-financed property.

An exception to the debt-financed property rules was added to the Internal Revenue Code by the Miscellaneous Revenue Act of 1980 for debt-financed real property investments of pension trusts that satisfy certain conditions. Section 110(b) of that act specifically stated that this exception was not to be considered precedent for extending the exception to other exempt organizations. The stated reason for providing this special exception for pension trusts is that the exemption of investment income of qualified retirement trusts is an essential tax incentive which is provided to tax qualified plans in order to enable them to accumulate funds to satisfy their exempt purpose, which is the payment of employee benefits. The reason for limiting the exception to investments by pension trusts was that the assets of these trusts ultimately will be used to pay taxable benefits to individual recipients, whereas the investment assets of other exempt organizations are not likely to be used for the purpose of providing benefits that will be taxable at individual rates.

S. 1183 would provide an exception to the debt-financed rules for investments in real estate by schools and certain affiliated support organizations. However, the exception would not apply in certain cases involving contingent purchase prices or the leasing of property back to the seller.

The debt-financed property rules were intended to prevent the use of an exempt organization's tax exemption for the benefit of taxable persons. In the absence of the debt-financed property rules, it would be much easier to provide benefits to taxable persons through the conversion of ordinary income to capital gain income, through the payment of a higher price for property than a taxable investor would pay, or through the transfer to a taxable person of the tax benefits associated with an investment made by a tax-exempt organization.

We do not believe the provisions of S. 1183 would prevent these uses of a tax-exempt organization's exemption for the benefit of a taxable person. One possibility for abuse exists because the bill would permit nonrecourse financing by the seller if the financing provided is not subordinate to other debt on the property and the rate of interest is not significantly less than the market rate. These restrictions would not prevent the conversion of ordinary income to capital gain in the hands of the seller or the payment of an inflated price for the property based on the exempt organization's ability to receive rental income from the property tax free.

The bill also would create significant incentives for the development of methods for transferring to taxable persons the substantial tax benefits arising from leveraged real estate investments by tax-exempt organizations. S. 1183 contains no provisions to prevent partnership allocations that would transfer the tax benefits on a partnership real estate investment from tax-exempt partners in the partnership to taxable partners in the partnership. Through these partnership allocations, taxable persons could obtain significant tax deferral benefits and could convert ordinary income to capital gain income in a wide variety of transactions. Indeed, the possibilities for using partnership allocations to transfer tax benefits from a tax-exempt organization to taxable partners are so varied that it is doubtful that rules could be drafted to prevent all abuses of this sort.

Additionally, the bill would give tax-exempt educational institutions an incentive to solicit and accept gifts of real estate tax shelters that have passed the cross-over point at which the taxable income exceeds the cash flow produced. Charitable contributions of such investments would provide further tax advantages to the taxable investors.

The proponents of S. 1183 argue that the investment needs of schools are no different from the investment needs of pension trusts and, therefore, the exception for debt-financed property owned by pension trusts should be extended to schools. In enacting the special exception for pension trusts, Congress indicated that pension trusts were distinguishable from other tax-exempt organizations because their purpose was to permit the accumulation of investment income and because the assets of pension trusts are ultimately paid to taxable individuals. In view of these distinguishing characteristics, Congress considered it appropriate to provide a special rule for pension trusts alone. In fact, the statute, as enacted, contains a specific acknowledgment of that understanding by the Congress.

While we agree that the distinctions drawn between pension trusts and other tax-exempt organizations on this basis may be regarded as tenuous, we do not agree that the existence of a special exception for pension trusts justifies a similar exception for schools. We see the same problems with the pension trust exception that we discussed concerning S. 1183. Thus, we oppose the expansion of the exception.

Furthermore, the arguments for expansion of the pension trust exception to schools would apply equally to other public charities, and perhaps to all tax-exempt organizations, not just to educational institutions. In addition, a broad exception for debt-financed investments in real estate could be used as precedent for adding exceptions for debt-financed investments in other types of property; for example, the pension trust exception has been used as a model for proposed legislation to provide an exemption for debt-financed investments in working interests in oil and gas wells.

Treasury believes that the debt-financed property rules are sound and should not be narrowed by piecemeal exceptions such as the one proposed in this bill for real estate investments by schools. Enactment of the bill, in our view, would create new opportunities for abuses involving nonrecourse seller financing and the transfer to taxable persons of tax benefits attributable to investments by tax-exempt organizations. Accordingly, we must oppose S. 1183.

This concludes my prepared remarks. I will be happy to answer your questions.

Senator PACKWOOD. I must say, Mr. Woodward, that the Treasury Department is more receptive to some of these bills than they usually are to the bills that we hear in this committee.

Let me ask you something on the unrelated income from tax exempt organizations. You may be aware that we had some hearings earlier this year on income derived from mailing lists owned by organizations. The Treasury Department was opposed to extending an exemption to that income, indicating that it was unrelated. And, yet, income from such organizations as the Junior League Thrift Shop, is regarded either as related income or it is not taxed; is that correct?

Mr. WOODWARD. I believe there is a statutory exception to exclude that sort of income. I am not sure of the history of that exception other than I think it is something that was well-established at the time the legislation was enacted. These were quite common sorts of arrangements. I suppose that the argument for competition with taxable businesses would be applicable in the case of those types of businesses, but there were exceptions that were created to the unrelated income tax based upon traditional practices that had existed for long periods of time and had not been perceived as abusive. It was a matter of drawing the line, in large measure, in that legislation to prevent at least the expansion into other types of activities. And I think those expansions are proposed in several of the bills that have been before this subcommittee recently.

Senator PACKWOOD. Is your exception to the expansion because it is unrelated income or because there is no way to limit it so that it would benefit taxpaying persons?

Mr. WOODWARD. I think our primary objection on this bill, S. 1183, is the possibility of tax benefits being transferred to taxable persons.

Senator PACKWOOD. Is there a way that could be eliminated?

Mr. WOODWARD. It could be eliminated by restricting the exception to debt-financed investments in which there is no shared ownership by taxable parties. For example, if partnership vehicles were prohibited from providing this form of investment to tax-exempt institutions, there would not be that mechanism for transferring tax benefits through partnership allocations. A partnership involving solely tax-exempt entities again would not involve the tax benefit transfer problem that I pointed out in my testimony. I think we would be willing to consider whether or not that sort of much narrower exception could be developed. I am not sure whether it would be acceptable.

Senator PACKWOOD. I was going to ask you if you had an exception that narrow. I am not sure that the benefit to the schools would be sufficient to justify passing the bill.

Mr. WOODWARD. Well, I am not really sure either. We have discussed that with some of those interested in this legislation, and they were not receptive previously. But we do not think that there is really any way through drafting that we can limit the tax benefit transfers from the tax-exempts to the taxables if partnerships of taxables and tax exempts are permitted to invest in this form. And I might add that it is analogous to the problems that we have been facing with the leasing legislation involving tax-exempt and Government entities. I think much the same considerations would be involved in this legislation as are dealt with in the leasing legislation.

Senator PACKWOOD. I have no further questions. Sparky?

Senator MATSUNAGA. Thank you, Mr. Chairman.

Mr. Woodward, with reference to S. 1183, you are evidently concerned about the allocation of income deductions, gains, losses, and distributions of property with different bases. Were we to draft a rule precluding non-pro-rata allocations among nontaxable and taxable partners, would you then withdraw your opposition to S. 1183?

Mr. WOODWARD. Senator, we have studied this fairly thoroughly trying to determine whether there could be restrictions on partnership allocations of the type you described. One problem we have is that any rules would operate only on a year-by-year basis. Thus, even though you could prohibit non-pro-rata allocations, there woud be so-called "flip-flop" mechanisms which might not be covered by that. Alternatively, there are a number of other ways that you can achieve the same effect as a non-pro-rata or a special allocation that would not be covered by a limitation on non-pro-rata allocations.

Second, even if you were to prohibit the special allocations in these partnerships, it would not prevent the charitable contribution technique involving the crossover tax shelters. This occurs where an investor goes into a tax shelter real estate partnership and enjoys the tax benefits during the early period of his holding of that benefit. Then, as you know, as the investment grows older, the cash flow begins to be less than the taxable income from the property, because some of the cash flow is being used to pay down the indebtedness and the depreciation deductions run out. We believe that a charitable contribution at this point would be a significant new advantage to tax shelters because the investor in that situation would be able to contribute his tax shelter partnership interest to a tax-exempt institution and would be able to claim a valuation for his interest without regard to any tax detriments that are inherent in that investment. He would recognize no recapture income in many cases, at least if he avoids the liability in excess of basis problem. It is not quite a burned-out shelter, but it is at a crossover point. No limits on non-pro-rata allocations would, I think, be effective to deal with that sort of a problem.

Senator MATSUNAGA. Now, would you be less inclined to object if we were to put in the provision?

Mr. WOODWARD. Certainly any narrowing of it would make it somewhat less objectionable, but I think that we would continue to have an objection.

Senator MATSUNAGA. I am trying to arrive at some compromise that we can all agree to, and that is what I am searching for here.

Mr. WOODWARD. I think that the compromise that we would be willing to consider is one that would limit these types of investments, if a partnership is to be used, to a partnership only of tax-exempt investors. And you also have to cover the tiered partnership arrangements as well. We think that the unrelated business income tax rules are sound as a basic matter. But it is difficult to perceive the competitive concern in the case of leveraged real estate investments quite as much as you do in other cases.

Senator MATSUNAGA. Was that the same position you took relative to pension plans?

Mr. WOODWARD. I think that the Treasury did not object as strongly to that provision as I would have. But I do think that they were careful to note that there were possibilities of abuses that they were not sure about, and that there might have to be another look taken at this. We see some problems in the pension trust exception, as well, along the lines that we have discussed.

Senator MATSUNAGA. Well, I am puzzled now. How can the Treasury justify its position prohibiting tax-exempt organizations other than pension trusts from investing in debt-financed real estate on a nontaxable basis when it already has extended the right to invest on a tax-free basis to pension trusts, which comprise approximately 95 percent of the tax-exempt investment marketplace? We are dealing here with only 5 percent.

Mr. WOODWARD. I think that we are saying that that pension trust exception is deserving of another look, and that we see some real problems in it.

Senator MATSUNAGA. Well, if——

Mr. WOODWARD. And that we would not favor expanding it into a different area.

Senator MATSUNAGA. If it is our goal, as I believe you will agree it is the administration's goal, to permit certain entities, educational organizations, to function at a reduced cost, especially now with reduced Federal subsidies, is it not totally inconsistent for the administration now to say that they should be taxable on their investment income that provides the funds to operate the pension trust as well as the proposed school funds?

Mr. WOODWARD. I think, Senator, that it is a question of degree. And what we are saying this morning is that when we get into the area of transferring tax benefits on investments that are being made by tax-exempt institutions, we have to draw the line because we think there is substantial potential for abuse, notwithstanding our full support for the tax exemption. When we get into this new sort of activity, we think there are some problems that would arise that we feel bound to point out to this subcommittee and to raise objection to.

Senator MATSUNAGA. If we were to prohibit nontaxable entities from acquiring property subject to nonrecourse financing held by sellers, would this then eliminate your opposition to S. 1183 in that regard?

Mr. WOODWARD. It would improve the bill from our standpoint to eliminate nonrecourse seller financing.

Senator MATSUNAGA. Are you here, Mr. Woodward, expressing the administration's views or your personal views?

Mr. WOODWARD. These are the views of the Treasury Department, which have been cleared in the normal course through the administration. I believe we can consider these to be the administration's views.

Senator MATSUNAGA. If you were to express your personal views as a consultant, would it be the same?

Mr. WOODWARD. Yes, sir.

Senator MATSUNAGA. Or would your opinion be dependent upon who hires you as a consultant?

Mr. WOODWARD. [Laughter.]

Senator MATSUNAGA. Well, I am surprised because in the light of what this administration did in the 1981 Tax Act for taxable investors, permitting them not only not to be taxed on debt-financed investments but, in addition, enabling them to offset other taxable income with deductions in excess of the income from the debt-financed property. The Treasury's position on this seems to be indefensible.

I see that my time is up. I have other questions which I may put later on in writing.

I have some questions from Senator Pryor that he would like to be answered.

Mr. WOODWARD. In writing?

Senator MATSUNAGA. For the record, yes.

May I at this point insert Senator Pryor's questions?

Senator PACKWOOD. We will insert them in the record and you make sure Treasury gets them.

[Questions by Senator Pryor and the responses from Mr. Woodward follow:]

QUESTIONS SUBMITTED BY SENATOR DAVID PRYOR

H.R. 2163

August 3, 1983

1. Under Section 4161 of the Internal Revenue Code the fishing equipment currently subject to the 10% federal excise tax is fishing rods, creels, reels, and artificial lures.

   (a) Please list the amout of revenue generated each year by this excise tax for each of those items. Include fiscal years 1980, 1981, 1982 and the estimates for 1983 and 1984.

   (b) Please list the amout of money received by the states under this program -- state-by-state and how the money can be used by the states.

2. Section 311 (b) of H.R. 2163 expands the list of items subject to the 10% excise tax. Please give the estimates for the amount of revenue that will be generated. Break this down according to the definitions in that section of the bill.

   Also, are any items omitted from the list in Section 311 which were originally proposed by either your agency or any other agency of the federal government?

3. What is the reason(s) for the expanded list of items? Is the Dingell-Johnson fund running low and what is the current balance and estimated outlays for the next two fiscal years?

4. In Section 311 (a) of the bill a 3% excise tax is levied on electric outboard boat motors. Have they been taxed previously? Also, why was the figure of 3% chosen?

5. With regard to tackles boxes, why is the term not defined in the bill? Isn't it true that tackle boxes can be used for activities other than fishing? If that's the case, why should the tax be imposed when the use is not related to sport fishing? How much revenue will be raised by this item being included in the list?

TREASURY RESPONSES TO QUESTIONS
SUBMITTED BY SENATOR DAVID PRYOR

1. (a) The attached Exhibit I lists the amount of revenue generated for fiscal years 1980, 1981, 1982, and estimates of the revenue to be generated for 1983 and 1984, by the current excise tax on sport fishing equipment imposed under section 4161 of the Internal Revenue Code.

(b) The attached Exhibit II gives a State-by-State breakdown of the money received by each State under the Dingell-Johnson program during fiscal year 1983. Under the Dingell-Johnson Act, there is authorized to be appropriated an amount equal to the revenue derived from the excise tax on sport fishing equipment. Any State that wishes to receive any of these appropriations must submit to the Secretary of the Interior a program or project for fish restoration. Amounts are appropriated to reimburse States for up to 75 percent of the cost of approved projects. Approved projects include research into problems of fish management and culture, surveys and inventories of fish populations, restocking waters with food and game fishes according to natural areas, and acquisition and improvement of fish habitat that provide access for public use. The amount of assistance for these programs is determined by statutory formula.

The State allocations are apportioned as follows:

a. 40 percent in the ratio which the area of each State, including coastal and Great Lakes waters, bears to the total area of all the States.

b. 60 percent in the ratio which the number of persons holding licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which the apportionment is made bears to the number of such persons in all the States.

No State is permitted to receive less than one percent or more than 5 percent of the total amount apportioned. Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands can also be appropriated limited amounts of these revenues.

2. Question 2 asks for estimates of the amount of revenue

that would be generated from the expansion of the list of items to be subject to the 10 percent excise tax under section 311(b) of H.R. 2163. While we are unable to provide a complete breakdown according to the definitions of items specified in section 311(b) of H.R. 2163, we have enclosed, as Exhibit III, a table showing the additional amount of revenue that will be generated from the expansion of the excise tax by H.R. 2163. The revenue estimates for H.R. 2163 were derived from information supplied by the United States Fish and Wildlife Service. Detail is not available on the additional receipts generated by each of the individual listed items. For calendar year 1984, the expansion of the 10 percent tax on recreational fishing equipment is expected to yield $9 million. The three percent tax on electric outboard motors is expected to raise $2 million.

The version of H.R. 2163, as passed by the House on July 12, 1983, differed from the version of the bill as reported by the House Merchant Marine and Fisheries Committee on May 16, 1983, in that the list was narrowed by the House Ways and Means Committee to include only discrete items primarily used in sport fishing. The Ways and Means Committee changes to the original bill were intended to make the excise tax more administrable by the Internal Revenue Service.

3. The Administration believes that to the extent it is administratively feasible, the sport fishing equipment excise tax, which is in essence a type of user fee, should be borne by manufacturers of all types of sport fishing equipment. For this reason, we support the expansion of the list of items subject to tax. In addition, the Administration supports an increase in the amount of funds appropriated to the States to improve sport fishery resources. Prior to H.R. 2163, there was no Dingell-Johnson fund as such, rather, there was a standing appropriation equal to the amount of tax revenue generated from the tax. H.R. 2163 would create a special trust fund into which revenues from the tax would be deposited.

4. Electric outboard boat motors have not been taxed previously. The excise tax proposed to be applicable to these motors is set at 3 percent, rather than 10 percent, because the motors are frequently used for activities other than sport fishing.

5. The term "tackle boxes" is defined in H. Rept. No.

98-133 (part 2), 98th Cong., 2d Sess. 8 (1983), as "all portable containers of whatever material made that are designed or sold as items in which to store and organize fishing paraphernalia such as hooks, lures, flies, sinkers, bobbers, etc., until such time as these items are placed on the fishing line, rod, or reel." While it is true that it may be difficult to tell whether a tackle box will be used for fishing or for other purposes (e.g., as a sewing box), the House intended only to tax those tackle boxes which are designed or sold as items to be used for fishing. Presumably, manufacturers may be able to identify tackle boxes that are designed to be sold for fishing and those that are designed to be sold for other purposes. We are unable to estimate the revenue that will be raised by this item being included in the list.

Exhibit I

Tax Liability

Excise Tax on Fishing Equipment

($ thousands)

Fiscal Years				
1980	1981	1982	1983	1984
33,640	32,143	35,011	36,000	38,000

Office of the Secretary of the Treasury
Office of Tax Analysis
September 6, 1983

Note: 1984 budget projections are shown for fiscal year 1983 and fiscal year 1984.

Exhibit II

Dingell-Johnson

Apportionments - Fiscal Year 1983

States	
Region 1	
California	$1,639,000.00
Hawaii	327,800.00
Idaho	574,969.00
Nevada	509,497.00
Oregon	812,487.00
Washington	828,781.00
American Samoa	109,267.00
Guam	109,267.00
N. Mariana Islands	109,267.00
Total	$5,020,335.00
Region 2	
Arizona	$707,281.00
New Mexico	592,662.00
Oklahoma	629,121.00
Texas	1,639,000.00
Total	$3,568,064.00
Region 3	
Illinois	$713,180.00
Indiana	516,696,00
Iowa	498,476.00
Michigan	1,242,445.00
Minnesota	1,260,520.00
Missouri	810,300.00
Ohio	790,999.00
Wisconsin	1,172,339.00
Total	$7,004,955.00
Region 4	
Alabama	540,262.00
Arkansas	564,564.00
Florida	663,744.00
Georgia	667,870.00
Kentucky	536,229.00
Louisiana	503,860.00
Mississippi	439,022.00
North Carolina	493,992.00
South Carolina	395,013.00
Tennessee	583,759.00
Puerto Rico	327,800.00
Virgin Islands	109,267.00
Total	$5,825,382.00

Exhibit II

Dingell-Johnson

Apportionments - Fiscal Year 1983

States	
Region 5	
Connecticut	$327,800.00
Delaware	327,800.00
Maine	327,800.00
Maryland	327,800.00
Massachusetts	327,800.00
New Hampshire	327,800.00
New Jersey	327,800.00
New York	775,646.00
Pennsylvania	822,554.00
Rhode Island	327,800.00
Vermont	327,800.00
Virginia	501,719.00
West Virginia	327,800.00
Total	$5,377,919.00
Region 6	
Colorado	$843,469.00
Kansas	501,658.00
Montana	745,460.00
Nebraska	420,146.00
North Dakota	358,959.00
South Dakota	385,421.00
Utah	564,748.00
Wyoming	524,484.00
Total	$4,344,345.00
Region 7	
Alaska	$1,639,000.00
Total funds apportioned .	$32,780,000.00

Office of the Secretary of the Treasury
Office of Tax Analysis

September 7, 1983

Source: Statistical Summary for Fish and Wildlife Restoration, Fiscal Year 1983: Division of Federal Aid, U.S. Fish and Wildlife Service.

Exhibit III

Revenue Effect

H. R. 2163

Expansion of Fishing Excises
(Excluding Fish Finders)

($ millions)

	Fiscal Years				
	1984	1985	1986	1987	1988
Excise	8	12	12	13	13
Net revenue	6	9	9	10	10

Office of the Secretary of the Treasury
Office of Tax Analysis

September 19, 1983

Note: For calendar year 1984 the expansion of the current 10 percent tax to certain recreational fishing accessories would increase excise receipts by $9 million; the proposed 3 percent tax on trolling motors would raise $2 million.

Senator PACKWOOD. Senator Long.

Senator LONG. In his statement, I found a discussion about fishfinders. Can you describe for me what a fishfinder is, what one looks like? I used to require, when I was chairman, on tariff bills that they bring us a sample of what it was we were discussing. If we would be talking about a Chinese gooseberry, nobody knew what a Chinese gooseberry looked like; we had an example of a Chinese gooseberry. What does a fishfinder look like? Can you describe one of them to me?

Mr. WOODWARD. As I understand it, and I think I have seen one or two of them in operation, they are sonar devices that are installed on boats which bounce sound waves off of the surface and they show on a screen when there are fish in the area. There is some concern that has been expressed as to where you draw the line between these devices which are attempting to locate fish and those are used merely for navigational purposes. I was present at the debate before the Ways and Means Committee on an exception that was added in the committee markup to exclude certain types of fishfinders from the tax. I know there was a debate as to whether those were really fishfinders or, as it was argued by the proponents of the particular exclusion, whether they were more in the nature of navigational devices.

Senator LONG. Can you tell me what one of those devices costs an ordinary sport fishing boat?

Mr. WOODWARD. I am sorry, I have never bought one nor priced one. I do not have that information.

[Private discussion off the record.]

Mr. WOODWARD. I am told that the highest price of one of those for a sport fishing boat is about $1,000.

Senator PACKWOOD. Senator Matsunaga, do you have any more questions?

Senator MATSUNAGA. Yes, one question.

Now, as I understand it, the holding and improvement of real estate for the purpose of deriving rental income is not considered an unrelated trade or business for tax exempt educational institutions. Am I correct?

Mr. **Woodward**. That is correct, in the absence of debt financing.

Senator **Matsunaga**. Right. So that we are merely asking in 1183 to extend the exemption to property purchased, or improved, with borrowed money. That is all that 1183 does, does it not?

Mr. **Woodward**. That is correct.

Senator **Matsunaga**. And under this bill, we have the same restrictions which are applicable to pension plans as will be applied to educational institutions in S. 1183. Am I not correct?

Mr. **Woodward**. That is correct.

Senator **Matsunaga**. So I cannot understand why the Treasury opposes it unless the basis of your opposition is that you are looking carefully at the pension plans and perhaps suggest a repeal of that.

Mr. **Woodward**. We are not suggesting a repeal at this time. We certainly do not have a bill to do that, but we do think there are some problems with that exception that would be expanded here. I think that the debt-financing aspect of it is simply in recognition that the conventional way for structuring real estate deals is to use debt financing, and that is a key part.

Senator **Matsunaga**. Let me ask you this: Did not the 1980 law eliminate the abuses that used to take place—the sale and leaseback provisions?

Mr. **Woodward**. The 1980 legislation for pension trusts?

Senator **Matsunaga**. Yes.

Mr. **Woodward**. It does deal with some of them, but we do not believe that it is adequate to deal with the partnership allocation problem.

Senator **Matsunaga**. I was one of those who helped to enact that law in order to stop the abuse. The act had to be amended to provide for exemption for pension plans, and which now needs to be amended to provide exemption, under certain restrictions of course, for educational institutions.

My question is: Have we not stopped the abuse which we had intended to under the previous law?

Mr. **Woodward**. No, Senator Matsunaga, I do not believe that we have. At least, I do not believe we have if you consider it an abuse for tax benefits, accelerated depreciation and the like, attributable to an investment by a tax-exempt institution to be transferred to a taxable party, who can then use the benefits to defer his current income. In addition, because of the fact that the recapture rules will not apply to real estate investments if you use straight line depreciation over 15 years, the transfer of tax benefits allows the conversion of ordinary income to capital gain. We support the rules in the case of investment by taxable parties, but when we get across the line into releasing the tax benefits on property investments in the tax-exempt sector so that they can be used by taxable parties, we end up with just the same problems we have with the leasing transactions that you have heard so much about involving tax-exempt organizations and governments.

Senator **Matsunaga**. I can sense a basic difference in philosophy here—and an inconsistent attitude on the part of the administration. On the one hand it is urging that the private sector try to carry on charitable work, and on the other hand, it is trying to make it even more difficult for the private sector to participate in carrying on charitable work. This is truly inconsistent, and I guess, despite the opposition of the administration, the Congress is going to have to go ahead.

Mr. **Woodward**. Well, I might say that our concerns here are much the same as were reflected in the safe harbor leasing rules, which the administration fully supported. Safe harbor leasing was not available for tax-exempt institutions, and for, I think, the same reasons we have problems with the tax benefit transfers that would be enabled by the legislation in S. 1183. So I think it is not an inconsistency. It is really a matter of saying at what point you have to draw the line on the use of tax benefits; at what point they no longer become appropriate.

Senator **Matsunaga**. Mr. Chairman, I see that we are not getting anywhere.

Senator **Packwood**. I think, Sparky, it is a difference of opinion. We will work on that in mark up.

Mr. Woodward, thank you.

Mr. **Woodward**. Thank you, Mr. Chairman.

[The prepared statement of Robert G. Woodward follows:]

For Release Upon Delivery
Expected at 9:30 a.m., E.D.T.
August 3, 1983

STATEMENT OF
ROBERT G. WOODWARD
ACTING TAX LEGISLATIVE COUNSEL
DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE SENATE COMMITTEE ON FINANCE

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to present the views of the Treasury Department on the following bills: H.R. 2163, which would increase the excise tax revenues earmarked for the Dingell-Johnson Sport Fish Restoration and Management Program, extend the time for paying the sport fishing equipment excise tax, and provide special tax rules for the National Fish and Wildlife Foundation; S. 927, which also would extend the time for paying the sport fishing equipment excise tax; and S. 1183, which would exempt from the tax on unrelated business income certain debt-financed income of educational institutions.

H.R. 2163 and S. 927

Tax Changes Relating to the Dingell-Johnson Program and the National Fish and Wildlife Foundation

At the outset, I would like to emphasize that the following comments on H.R. 2163 address only the tax provisions of the bill and do not address its expenditure or other provisions. Titles I and II of H.R. 2163 amend the expenditure guidelines of the Federal boating safety and the Dingell-Johnson programs. The Treasury Department defers to the Departments of the Interior and Transportation on these aspects of H.R. 2163.

Title III, Subtitle A of H.R. 2163 and S. 927: Amendments to the Excise Tax on Sport Fishing Equipment and Expansion of the Dingell-Johnson Program

Background

The Dingell-Johnson Act provides aid to the States for the restoration and management of all species of fish that have material value in connection with sport or recreation in U.S. waters. The program is administered by the Department of the Interior and is currently financed by the earmarking of general revenues equal to those derived from the 10 percent manufacturers excise tax imposed under Internal Revenue Code section 4161(a). This tax is imposed on sales by manufacturers, producers, and importers of fishing rods, creels, reels, and artificial lures, baits, and flies (including parts or accessories of such articles sold on or in connection therewith, or with the sale thereof).

The Recreational Boating Safety and Facilities Improvement Act of 1980, as amended and extended through fiscal year 1988 by the Highway Revenue Act of 1982, provides aid to the States for recreational boating safety and facilities improvement. The program is administered by the Department of Transportation and is currently financed by up to $45 million per year of revenues from the excise taxes imposed under Code sections 4081 and 4041(a)(2) on gasoline and special motor fuels used in motorboats. The excess, if any, of such revenues over the $45 million annual and total fund limits of Code section 9503(c)(4) is currently deposited in the Land and Water Conservation Fund. The Land and Water Conservation Fund is expended primarily for land and water area acquisition costs, including the cost of acquiring national park lands, wilderness area lands, and national recreation areas.

Under current Treasury regulations, a manufacturer or retailer generally is required to file an excise tax return quarterly on or before the last day of the first month after the end of each quarter.1/ Although most Federal excise tax returns are filed on a quarterly basis, current Treasury regulations generally require monthly or semimonthly payment of the tax.2/ If a taxpayer is liable in any month (other than the last month of a calendar quarter) for more than $100 of excise tax and is not

---

1/ Treas. Reg. §§ 48.6011(a)-1; 48.6071(a)-1.

2/ Treas. Reg. § 48.6302(c)-1.

required to make semimonthly deposits, the taxpayer generally must deposit the amount on or before the last day of the next month at an authorized depository or at the Federal Reserve Bank serving the area in which the taxpayer is located. If a taxpayer has more than $2,000 in excise tax liability for any month of a preceding calendar quarter, such taxes generally must be deposited for the following quarter (regardless of amount) on a semimonthly basis. Under the semimonthly system, the taxes generally must be deposited by the ninth day following the semimonthly period for which they are deposited. Any underpayment for a month (other than the last month in a calendar quarter) generally is required to be deposited by the ninth day of the second month following such month. Any balance due for each quarterly period generally must be deposited by the last day of the month following such calendar quarter.

Description of Title III, Subtitle A of H.R. 2163 and S. 927

As a procedural matter, Title III, Subtitle A of H.R. 2163 would formally set up a new trust fund, the Aquatic Resources Trust Fund, in Subtitle I (the Trust Fund Code) of the Internal Revenue Code. The Aquatic Resources Trust Fund will consist of two accounts, the Sport Fish Restoration Account and the Boating Safety Account, into which the respective revenues earmarked for the Dingell-Johnson program and the Federal boating safety program will be transferred.

Subtitle A of Title III of H.R. 2163 would make three changes that would greatly increase the revenue to be deposited in the Sport Fish Restoration Account to be used for the Dingell-Johnson program. First, the bill would increase the amount of the revenues derived from the sport fishing equipment excise tax by expanding the types of items currently subject to the tax. A tax of 10 percent would be levied upon the sale by a manufacturer, producer, or importer of all "sport fishing equipment" (including parts or accessories of such equipment sold on or in connection therewith or with the sale thereof). In addition, the bill would impose the tax at a special 3 percent rate on the sale of electric outboard boat motors. The bill defines the term "sport fishing equipment" by providing a specific list containing most of the items used primarily in sport fishing. Thus, the bill would expand the current list of items subject to tax to include certain fishing lines used primarily in sport fishing, fishing spears, spear guns, and spear tips, all items of terminal tackle used primarily in sport fishing, certain fishing supplies and accessories, fish fighting chairs, and fishing outriggers and downriggers.

Second, the bill would transfer the revenues from the import duties on fishing tackle, yachts and pleasure craft to the Sport Fish Restoration Account to be used for the Dingell-Johnson program.

Third, the bill would transfer the revenues from the excise taxes on gasoline and special motor fuels used in motorboats, to the extent such revenues exceed the amount required to be transferred to the Boating Safety Account plus $1 million, to the Sport Fish Restoration Account to be used for the Dingell-Johnson program, rather than transferring such funds to the Land and Water Conservation Fund as provided by present law. The first $1 million of motorboat fuels tax revenues in excess of the amount required to be transferred to the Boating Safety Account would continue to be transferred to the Land and Water Conservation Fund.

H.R. 2163 also would extend the time for paying the excise tax on sport fishing equipment. Under the bill, payment of these excise taxes would be required on a quarterly basis as follows:

a. in the case of articles sold during the quarter ending the previous December 31, on March 31;

b. in the case of articles sold during the quarter ending the previous March 31, on June 30;

c. in the case of articles sold during the quarter ending the previous June 30, on September 24; and

d. in the case of articles sold during the quarter ending September 30, at such time as the Secretary may by regulations prescribe.

S. 927 is virtually identical to the provision in H.R. 2163 that would extend the time for payment of the excise tax on sport fishing equipment, except for the effective date discussed below. Neither H.R. 2163 nor S. 927 would amend the time prescribed under present law for filing excise tax returns or the time for payment of such taxes on articles other than sport fishing equipment.

The above amendments made by Title III, Subtitle A of H.R. 2163 to the excise tax on sport fishing equipment would be effective with respect to articles sold by the manufacturer, producer, or importer after December 31, 1983, except that the extension of time for payment of the sport fishing equipment excise tax would be effective with respect to articles sold after September 30, 1983. The amendments made by S. 927, extending the time for payment of the sport fishing equipment excise tax, would apply to articles sold on or after the first day of the first calendar quarter beginning after the date of enactment of S. 927.

Discussion

The Administration cannot support H.R. 2163 in its present form. As previously discussed, Title III, Subtitle A of the bill makes three tax changes to increase the revenue earmarked for the Dingell-Johnson program. The Administration generally supports the expansion of the sport fishing equipment excise tax to cover the majority of items primarily used in sport fishing and the earmarking of the import duties on fishing tackle, yachts, and pleasure craft for the Dingell-Johnson program.

The Administration opposes, however, the diversion of revenues from the excise taxes on gasoline and special motor fuels used in motorboats to the Dingell-Johnson program. Transferring the motorboat fuels tax revenues to the program would have the effect of increasing Federal deficits by over $50 million annually. Furthermore, the present Dingell-Johnson program has been financed by the excise tax on fishing rods, creels, reels, and artificial lures, baits, and flies for over 30 years. Excise tax revenue used to fund the program has increased substantially over the years. In 1970, the tax generated only $14 million in revenue. In 1975, the tax generated $22 million in revenue. In 1980, the tax generated $34 million in revenue. In 1982, the tax generated $35 million in revenue and will generate approximately $36 million in 1983. We believe that the revenues from the expanded excise tax on sport fishing equipment and the earmarking of import duties will provide a sufficient increase in Federal support for the sport fishing program. We have attached schedules that indicate the projected effect of the bill on the Dingell-Johnson program and the revenue effect of the bill.

The Treasury Department also opposes the extensions of time for payment of the sport fishing equipment excise tax provided in section 311(c) of H.R. 2163 and in S. 927. The argument advanced for extending the time for payment of the excise tax is that the seasonal retail sale pattern for sport fishing equipment leads manufacturers to grant lengthy credit terms to distributors, so that the latter will increase stock during the off-season and enable the manufacturers to produce at a more even pace. Under present regulations, the manufacturers thus must pay the excise tax before they receive payment from their distributors. However, the extended credit terms of the manufacturers also require the manufacturers to finance all other expenses (rent, wages, raw materials, etc.) for some time before receiving payment from their distributors. H.R. 2163 and S. 927 could have the effect of delaying the payment of the excise tax more than that of other expenses of the manufacturers.

Moreover, different trades and businesses have different customary credit terms, which are designed to facilitate operations and maximize profits. Treasury sees no reason why the times for payment of the various excise taxes should be varied for different industries depending on the credit terms in each particular industry. If a special rule is fashioned for sport fishing equipment, other special rules may have to be given to every other industry that has unique business practices. Passage of this bill will lead to pressure from other industries seeking specialized relief.

In addition, it should be noted that H.R. 2163 and S. 927 do not affect the required due dates for filing the excise tax returns, which under current Treasury regulations are generally due on the last day of the first month after the end of each quarter. Presumably, Treasury would be forced to change the due dates for the excise tax returns with respect to sport fishing equipment to coincide with the extensions of time for payment provided by H.R. 2163 and S. 927. Otherwise, taxpayers would be required to file a return on one date and pay the excise tax at a later date without being able to indicate on the return when the full payment of the tax was made, which would present administrative difficulties. If the time for filing the excise tax returns with respect to sport fishing equipment is extended, taxpayers that sell both sport fishing equipment and items subject to other excise taxes would be required to file multiple returns each quarter -- one for the sport fishing equipment excise tax and one for all other excise taxes. This would create an additional administrative burden on taxpayers and the IRS.

Title III, Subtitle B of H.R. 2163: Expansion of the Excise Tax on Certain Arrows

Section 4161(b) of the Code imposes an 11 percent excise tax on the sale by a manufacturer, producer, or importer of any bow which has a draw weight of 10 pounds or more and of any arrow which measures 18 inches overall or more in length, as well as certain parts and accessories related thereto. Revenues from this tax are earmarked for the Pittman-Robertson program for support of State wildlife programs.

H.R. 2163 would expand the excise tax on arrows to include arrows less than 18 inches in overall length when the arrow is suitable for use with a taxable bow. The Treasury Department does not oppose this expansion of the excise tax on bows and arrows. It is our understanding that the arrows covered by this expansion of the excise tax are primarily used by hunters who benefit from the Pittman-Robertson program to the same extent as hunters using other types of arrows that are now subject to the excise tax.

Title III, Subtitle C of H.R. 2163: Tax Treatment of the National Fish and Wildlife Foundation

H.R. 2809, the National Fish and Wildlife Foundation Establishment Act, as passed by the U.S. House of Representatives on July 12, 1983, would establish a new Federally chartered charitable and nonprofit corporation to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service, and to conduct such other activities as further the conservation and management of fish and wildlife resources of the United States, its territories and possessions.

Section 331 of H.R. 2163 provides that the National Fish and Wildlife Foundation shall be relieved of the requirements of subsections (a) and (b) of section 508 of the Internal Revenue Code. Those subsections of the Code require an organization (other than certain churches and other organizations) to provide notice to the IRS that it is applying for recognition of its tax exempt status under section 501(c)(3) and that it is not a private foundation, in order to be treated as a tax exempt organization under section 501(c)(3) of the Code and to avoid the presumption that it is a private foundation. The effect of this provision is that, in order to be treated as a tax exempt organization under section 501(c)(3) and as a public charity, the National Fish and Wildlife Foundation would have to satisfy all the requirements of the Internal Revenue Code relating to such organizations other than the filing of these notices with the IRS. Further, any contributions to the foundation would be subject to the general rules for deductibility of such contributions provided in the Internal Revenue Code. The Treasury Department has no objection to this provision.

S. 1183
Exemption from the Unrelated Business Income Tax for Debt-Financed Real Property Investments of Schools

Background

Generally, exempt organizations are not taxed on income earned on investments. However, a tax is imposed on income earned by an exempt organization from business activities that are unrelated to its exempt purpose. Exceptions to this tax on unrelated business income are provided for certain traditional types of investment income (rents, royalties, dividends, and interest) unless the acquisition or improvement of the property producing the income is financed by debt. Subject to limited exceptions, a share of any income from debt-financed property, proportional to the ratio of debt on the property to the adjusted basis of the property, is treated as income from an unrelated trade or business.

The original rules relating to debt-financed property were enacted in 1950 in response to abusive sale-leaseback transactions between tax-exempt organizations and taxable owners of active businesses. These transactions typically involved a tax-exempt organization's purchase of an active business, financed primarily by a contingent, nonrecourse note, followed by a lease of the assets of the business to the seller. The effect of these transactions was to convert the ordinary income of the business into capital gains for the seller while allowing the tax-exempt organization eventually to acquire property with little or no investment of its own funds. The primary objection to sale-leaseback arrangements involving borrowed funds was that they permitted an organization's tax exemption to benefit the taxable seller, either by conversion of ordinary income into capital gain income or by payment of a higher price for the property than a taxable purchaser would pay.

Unfortunately, enactment in 1950 of a tax on income from certain leases was insufficient to prevent abuse because new forms of transactions involving leveraged investments quickly developed. In response to these new transactions, the unrelated business income tax rules were strengthened in 1969 by subjecting to tax the income received from all kinds of debt-financed property. This broad revision was designed to deal with all types of abuses involving leveraged investments by tax-exempt organizations.

An exception to the debt-financed property rules was added to the Code by the Miscellaneous Revenue Act of 1980 (P.L. 96-605) for debt-financed real property investments of pension trusts that satisfy certain conditions. Section 110(b) of that Act specifically stated that this exception was not to be considered precedent for extending the exception to other exempt organizations. The stated reason for providing this special exception was that exemption for investment income of qualified retirement trusts is an essential tax incentive which is provided to tax-qualified plans in order to enable them to accumulate funds to satisfy their exempt purpose -- the payment of employee benefits. The reason for limiting the exception to investments by pension trusts was that the assets of such trusts will ultimately be used to pay taxable benefits to individual recipients, whereas the investment assets of other exempt organizations are not likely to be used for the purpose of providing benefits that will be taxable at individual rates.

Description of S. 1183

S. 1183 would provide an exception to the debt-financed rules for investments in real estate by schools and certain affiliated support organizations. However, the exception would not apply to a real estate investment if --

(1) the acquisition price is not a fixed amount;

(2) the amount of any indebtedness, any amount payable with respect to any indebtedness, or the time for making

any payment with respect to any indebtedness is dependent upon the revenue, income, or profits derived from the real property;

(3) the real property is at any time after the acquisition leased to the seller or to certain persons related to the seller;

(4) the real property is acquired from or at any time after the acquisition is leased to certain persons related to the school; or

(5) the seller or any person related to the school or the seller provides nonrecourse financing in connection with the acquisition of the real property and such debt is subordinate to any other indebtedness on the property or bears a rate of interest which is significantly less than the rate available from an unrelated person.

Discussion

The debt-financed property rules are intended to prevent the use of an exempt organization's tax exemption for the benefit of taxable persons. In the absence of the debt-financed property rules, it would be much easier to provide benefits to taxable persons through conversion of ordinary income to capital gain income, through the payment of a higher price for property than a taxable investor would pay, or through the transfer to a taxable person of the tax benefits associated with an investment made by a tax-exempt organization. We do not believe the provisions of S. 1183 would prevent these uses of a tax-exempt organization's exemption for the benefit of a taxable person.

One possibility for abuse exists because the bill would permit nonrecourse financing by the seller if the financing provided is not subordinate to other debt on the property and the rate of interest is not significantly less than the market rate. These restrictions would not prevent the conversion of ordinary income to capital gain income in the hands of the seller or the payment of an inflated price for the property based on the exempt organization's ability to receive rental income from the property tax-free.

The bill also would create significant incentives for the development of methods for transferring to taxable persons the substantial tax benefits arising from leveraged real estate investments by tax-exempt organizations. S. 1183 contains no provisions to prevent partnership allocations that would transfer the tax benefits on a partnership's real estate investment from tax-exempt partners to taxable partners. Through such partnership allocations, taxable persons could obtain significant tax deferral benefits and could convert ordinary income to capital gain income in a wide variety of transactions. Indeed, the possibilities for using partnership allocations to transfer tax benefits from tax-exempt partners to taxable partners are so varied that it is doubtful that rules could be drafted to prevent all abuses of this sort. Additionally, the bill would give tax-exempt educational institutions an incentive to solicit and accept gifts of real estate tax shelters that have passed the "cross over" point at which the taxable income exceeds the cash flow produced. Charitable contributions of such investments would provide further tax advantages to the taxable investors.

The proponents of S. 1183 argue that the investment needs of schools are no different from the investment needs of pension trusts, and therefore the exception to the debt-financed property rules for pension trusts should be extended to schools. In enacting the special exception for pension trusts, Congress indicated that pension trusts were distinguishable from other tax-exempt organizations because the purpose of the exemption for pension trusts was to permit the accumulation of investment income and because the assets of pension trusts are ultimately paid to taxable individuals. In view of these distinguishing characteristics, Congress considered it appropriate to provide a special rule for pension trusts alone. In fact, the law as enacted contains a specific statement that the exception for pension trusts is not to be considered as precedent for any further exceptions to the debt-financed rules.

While we agree that the distinctions drawn between pension trusts and other tax-exempt organizations are tenuous, we do not agree that the existence of a special exception for pension trusts justifies a similar exception for schools. We see the same problems with the pension trust exception as we have discussed concerning S. 1183. Since we do not consider the pension trust provision to be a desirable exception to the debt-financed property rules, we oppose expansion of that provision.

Furthermore, the arguments for expansion of the pension trust exception to schools apply equally to other public charities, and perhaps to all tax-exempt organizations. In addition, a broad exception for debt-financed investments in real estate would be used as precedent for adding exceptions for debt-financed investments in other types of property. For example, the pension trust exception has been used as a model for proposed legislation (S. 1549) to provide an exemption for debt-financed investments in working interests in oil and gas wells.

The Treasury Department believes that the debt-financed property rules are sound and should not be narrowed by piecemeal exceptions such as the one proposed in this bill for real estate investments by schools. Enactment of the bill would create new opportunities for abuses involving nonrecourse seller financing and the transfer to taxable persons of tax benefits attributable to investments by tax-exempt organizations. Accordingly, we must oppose S. 1183.

* * *

This concludes my prepared remarks. I would be happy to answer your questions.

Effect on Dingell-Johnson Program of Expansion of Fishing Excises and Diversion of Motorboat Fuel Taxes Now Going to the Land and Water Conservation Fund

($ millions)

	Fiscal Years				
	1984	1985	1986	1987	1988
Expansion of fishing excise	9	13	13	14	14
Diversion of motorboat fuel money now going to Land and Water Conservation Fund	52	52	52	52	53
Total	61	65	65	66	67

Office of the Secretary of the Treasury
Office of Tax Analysis

June 1, 1983

Note: Transfer of duties now collected on fishing equipment would increase receipts (full year) to Dingell-Johnson by an additional $20 million per year.

Revenue Effect

H. R. 2163

Expansion of Fishing Excises

($ millions)

	Fiscal Years				
	1984	1985	1986	1987	1988
Excise	9	13	13	14	14
Net revenue	6	10	10	11	11

Office of the Secretary of the Treasury
Office of Tax Analysis

June 1, 1983

Note: For calendar year 1984 the expansion of the current 10 percent tax to certain recreational fishing accessories would increase excise receipts by $9 million; the proposed 3 percent tax on trolling motors would raise $2 million; the 3 percent tax on fish finders (except digital) would raise $1 million in excise taxes.

Senator PACKWOOD. Next, we have Congressman John Breaux, from Louisiana. Congressman, we appreciate your being here. I might say I work with the Congressman frequently, although it is more often in my capacity as Commerce Committee chairman. I am delighted to have him before this committee.

Mr. BREAUX. Thank you very much, Mr. Chairman.

Senator LONG. Might I join in welcoming the dean of the Louisiana House delegation. He is a mighty young looking man to be dean, but he is the dean of the Louisiana House Delegation.

Mr. BREAUX. It shows you what condition the House is in.

Senator PACKWOOD Does that mean, John, that you have served one-third as long as Russell Long has served in the Senate?

Mr. BREAUX. I think he was here when I was born.

Senator LONG. Well, speaking as one dean to the other dean, I am delighted to have you here, Dean.

Senator MATSUNAGA. I wish to join in welcoming Congressman John Breaux with whom I served in the House, and with whom I have had a good working relationship.

STATEMENT OF HON. JOHN BREAUX, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. BREAUX. Thank you very much, Senators, and thank all of you for allowing me to appear. I would like to just go ahead and submit my statement and just kind of summarize my remarks.

I want you to know I know absolutely nothing about the second part of the gentleman's testimony from the Treasury Department.

With regard to the first part of his testimony, I do know we have got about 55 million fishermen in this country, in Oregon and, of course, Hawaii and, certainly, our own State of Louisiana has a large concentration of sportsmen that make up the 55 million men and women, young and old, that fish in this country.

I think that one thing we can all agree on is that these people do not mind paying their own way to have an opportunity and if their money is being used to help the sport that they really like.

We have discovered some real inequities as far as fishermen are concerned and, at the same time, we have discovered that there is a tremendous need for additional money to be spent at the State level, by the Federal Government and by the States, to try and improve the fishing habitat. We need work on streams; we need work on rivers and lakes. We need better marshland facilities and we need better park facilities surrounding these areas. The States have testified over on the House side that they could use approximately $130 million in additional money for projects that are out there and pending. Now, I know if we ask the States if you can use more money, they are all going to say, "Of course we can." But we have kind of asked them to document whether there is a need for additional money and ask them how they would spend it. And they showed us some specific areas as to what they would spend the money for.

So what we try to do is quite simple. We already have an existing program that is called the Dingell-Johnson bill that has a 10-percent tax on rods and reels. And that tax goes into a fund to be used for fishing enhancement. There were some items that were not covered and so our legislation says well, we think these items ought to be covered. If you have a rod and reel that is covered, but the fishing line was not covered. That did not make any sense. You use a line to catch fish just like you use a rod and a reel. So we have added a number of items, Mr. Chairman and members to the list of items that would be subject to a 10-percent tax.

It is not a big tax. It is at the manufacturer's cost, and it is passed on by the manufacturer to the retail store, and the fisherman, when he goes in to buy his rod and reel and his line and his baits, he is going to pay that 10-percent tax. But he has done so knowing that the tax is going to be used to enhance his sport. So he says, "I'm fine; I'm willing to put out if you are going to spend it for that purpose." So it has worked very well.

So the first part of our legislation simply adds some items that were not covered previously.

Now, we had a really interesting debate over on the House side in the Ways and Means Committee with regard to fishfinders and, Russell, you brought that up. Now my argument has been that if it kind of looks like a duck and it quacks like a duck and it walks like a duck, it is probably a duck. Now, with regard to a fishfinder, if it looks for fish and it catches fish, it shows you where the fish are, and if you look at the advertisement that zeroes in on fish, you can probably come to the conclusion that it might be a piece of fishing equipment. But that is a policy question, and I am not going to argue it. I think you can make a very good argument the fact that a fishfinder that is advertised as one that can probably tell you the type of fish that is under the water by looking at the little screen probably helps people catch fish. And I think if you are going to tax everything else that catches fish, perhaps this ought to be included. That is something for this committee to look at. It is not a big tax.

We recognize that, well, maybe you could also use it to find out where you are in the lake and for safety purposes. I grant that. So, instead of taxing at 10 percent, we said we would make an exception and only tax it at 3 percent. And, you know, if the thing retails for, say, $600, and the manufacturer's cost is, say, $400, the tax on the manufacturer's cost is $400. Three percent of $400 is $12. An item that costs $600 is going to cost $612. I do not think a fisherman who can afford that is going to say, "Well, I would have bought that thing but, you know, they are going to tax me $12 and they are going to use it to build a boat ramp and I am not going to go for that." I do not think there are a lot of fishermen who are going to object like that. But, you know, it is for the Congress to decide, and I will leave it up to this committee's decision.

The second part of the thing is really simple too. We have a motorboat fuels tax just like we have the highway tax. A guy drives into a service station and he pays 9 cents for a gallon of gas. He knows that 9 cents is going to be used to fix the road. It is going to be used to fix the bridge that he has to drive on.

Well, we have a motorboat fuels tax, and it is 9 cents too. When a guy drives into a service station to fill up his outboard motor, he is paying 9 cents. But that money is not going to fix the highway because he is not going to run his boat on the highway. And he is not going to run it over the bridge. So his money is going into a fund called the motorboat fuels tax, but he ain't getting it back. It is sitting there. And we have been fighting over the years to try and say all right, if the guy is going to have a user tax put on his back, let us use it for the purpose in which we told him it was going to be used for.

Our Treasury says, "Well, we object, and you know why we object? Because it is earmarked." Of course it is earmarked. That was the purpose of the tax. The tax was to tell the people that we are going to make you pay 9 cents and we are going to help you build some fishing facilities.

Senator PACKWOOD. They do not object to all earmarked tax.

Mr. BREAUX. Of course not. Highway Trust Fund.

Senator PACKWOOD. Oh, they like that.

Mr. BREAUX. They like that. The same guy that drives in and puts gas in his car, that is earmarked for the highway. If he fills up the motorboat, that should not be earmarked for the boat ramp. It does not make any sense. I mean we should not have anything earmarked or we should have it earmarked for the purpose it was intended.

Anyway, Mr. Chairman, the legislation that we have sent over for your consideration would generate about $87 million in 1984, going to the States. In 1988, it would be over $100 million. The States could use it. The people who are going to pay that tax I think are willing to say, "We are willing to pay it if it is going to be used for the purpose for which you set it."

We need to have a compact with the sportsmen in this country. The administration is very strong for user fees, and this is a classic user fee. And I would submit that this is a good piece of legislation and recommend it for your consideration. That is all.

Senator LONG. First, they do not like user fees that they do not like, and, even if they agree to the user fee, they will not spend it. I was struck with the humor of the Treasury's testimony that this will increase the deficit $50 million because it is now in one trust fund that they will not spend. [Laughter.]

Well, we should not have user fees on motorboats to reduce the Federal deficit. That is not the way to do it.

Senator **Packwood**. I have no questions, John. Your testimony was excellent.

Senator **Matsunaga**. I have no questions either, except that I could not quite understand your mathematics. You said if it is $400, the tax would be $12. If it was $600 the total cost would be $612.

Mr. **Breaux**. Well, Sparky, the tax would be placed on the manufacturer's cost. And I was just suggesting if an item, if a fishfinder retailed in the store for $600, the manufacturer's cost may be about $400, so the tax would be based on that $400.

Senator **Matsunaga**. Not on the retail.

Mr. **Breaux**. Not on the retail price. It would be based on the manufacturer's cost, and 3 times 400 would be $12, so, presumably, he would add only the $12 to the final retail price.

Senator **Matsunaga**. Would that be too complex for the Treasury to apply?

Mr. **Breaux**. Well, I think they probably have the capacity to handle that little problem. Even I could figure that one out.

Senator **Packwood**. Russell.

Senator **Long**. I agree with you about fishfinders. Having heard the argument, I do not see any reason why not. If the good Lord lets me live long enough to retire from this place, I would like to go fishing and, if so, I will buy me a fishfinder. I can picture me going out there with that nice pension that Congressmen get, and with that fishfinder catching a whole boat full of those speckled trout. Here is some poor man fishing that cannot afford to pay for a fishfinder sitting there watching that carp which never seems to move, and he is paying a tax on his rod. It does not seem fair.

Mr. **Breaux**. Well, I would say he would probably pull his boat right next to yours. [Laughter.]

Senator **Packwood**. Thank you, Russell.

John, thank you for coming over. I appreciate your waiting.

Mr. **Breaux**. You bet.

[The prepared statement of Hon. John Breaux and Hon. Edwin Forsythe follows:]

STATEMENT BY HONORABLE JOHN BREAUX, CHAIRMAN
AND HONORABLE EDWIN FORSYTHE, RANKING MINORITY MEMBER
HOUSE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT
IN REGARD TO
H.R. 2163, THE BOATING SAFETY AND SPORT FISH RESTORATION ACT AMENDMENTS
BEFORE THE SENATE FINANCE COMMITTEE
WEDNESDAY, AUGUST 3, 1983

MR. CHAIRMAN, IT IS A PLEASURE TO APPEAR BEFORE THIS COMMITTEE. WE PARTICULARLY APPRECIATE THE PROMPTNESS WITH WHICH YOU SCHEDULED THE HEARING ON THIS IMPORTANT LEGISLATION.

MR. CHAIRMAN, WE BELIEVE THAT H.R. 2163, THE BOATING SAFETY AND SPORT FISH IMPROVEMENT LEGISLATION IS IMPORTANT FOR A NUMBER OF REASONS. THE TESTIMONY OF CONGRESSMAN GERRY STUDDS, THE PRIME AUTHOR OF TITLE I, ELABORATES ON THE NEED FOR GREATER SUPPORT OF BOATER SAFETY PROGRAMS; WE WILL FOCUS ON THE SPORT FISHERY TITLE OF THE BILL.

THE U.S. FISH AND WILDLIFE SERVICE, IN THEIR 1980 FISHING AND HUNTING SURVEY, ESTIMATED THAT APPROXIMATELY 54 MILLION AMERICANS FISHED IN 1980. IN PURSUING THEIR SPORT, THEY SPENT

APPROXIMATELY $17.3 BILLION. FISHING IS THE MOST POPULAR OUTDOOR SPORT; THE NUMBERS OF BACKPACKERS, BIRDWATCHERS, MOUNTAIN CLIMBERS AND EVEN HUNTERS PALE IN COMPARISON TO THE NUMBER OF PEOPLE IN THIS SOCIETY WHO FISH. IT IS INTERESTING TO NOTE THAT FISHING DRAWS ITS ENTHUSIASTS FROM ALL ECONOMIC GROUPS IN THE U.S. POPULATION; ALMOST HALF OF ALL FISHERMEN COME FROM HOUSEHOLDS WITH INCOMES OF LESS THAN $20,000. IT IS ALSO INTERESTING THAT FISHING IS PARTICULARLY POPULAR WITH YOUNG PEOPLE, INDICATING THAT THE SPORT WILL CONTINUE TO GROW IF HIGH QUALITY FISHING CONTINUES TO BE AVAILABLE IN THIS COUNTRY. AND THAT BRINGS US TO THE REASON FOR THE SPORT FISHING TITLE OF THIS LEGISLATION.

MR. CHAIRMAN, WE ARE AFRAID THE DAYS OF THE SOLITARY FISHERMAN FISHING LARGELY UNTOUCHED AND UNMANAGED WATERS ARE GONE. MORE AND MORE THE PRESSURE OF LARGE NUMBERS OF FISHERMEN, POLLUTION OF FISHING WATERS AND OTHER FACTORS ARE REQUIRING THE STATES TO MORE ACTIVELY MANAGE THEIR WATERS IF THEY ARE TO CONTINUE TO PROVIDE QUALITY FISHING. IN A RECENT SURVEY CONDUCTED BY THE AMERICAN FISHERIES SOCIETY, THE STATES ESTIMATED THEIR ADDITIONAL SPORT FISHERY MANAGEMENT NEEDS TO BE IN EXCESS OF $130 MILLION. WE ARE CERTAIN THAT LATER WITNESSES WILL PROVIDE ADDITIONAL INFORMATION REGARDING THESE NEEDS; AT THIS TIME WE WILL ONLY NOTE THAT, IN THESE TIGHT BUDGET TIMES AT BOTH THE FEDERAL AND STATE GOVERNMENT LEVELS, THE ROLE OF STATE FISHERY MANAGERS MUST BE PARTICULARLY DIFFICULT.

AN UNUSUAL ASPECT OF THE HUNTING AND FISHING COMMUNITY, AND ONE OF THE REASONS THAT CHAIRING THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT IS PARTICULARLY REWARDING, IS THE WILLINGNESS OF THE SPORTSMEN TO TAX THEMSELVES TO IMPROVE THE QUALITY OF THEIR SPORT. UNLIKE MANY OTHER INTEREST GROUPS THAT COME BEFORE US, THEY ARE ALWAYS WILLING TO PAY THEIR FAIR SHARE. THE PROBLEM WE HAVE BEEN GRAPPLING WITH OVER THE PAST SEVERAL CONGRESSES IS HOW TO DEVELOP AN EQUITABLE METHOD OF PROVIDING ADDITIONAL SUPPORT FOR STATE RECREATIONAL FISHING PROGRAMS. WE BELIEVE THAT THE LEGISLATION YOU HAVE BEFORE YOU ACCOMPLISHES THAT PURPOSE.

H.R. 2163, AS PASSED BY THE HOUSE, IS BASED SQUARELY ON THE EQUITABLE CONCEPT THAT PERSONS PAYING A "USER TAX" DERIVE SOME BENEFIT FROM THE TAX THEY ARE PAYING. RECREATIONAL BOATERS AND FISHERMEN PAY TWO SUCH TAXES. FISHERMEN, WHEN THEY PURCHASE RODS AND REELS AND CERTAIN OTHER FISHING TACKLE ITEMS, ARE PAYING EXTRA BECAUSE OF A 10 PERCENT EXCISE TAX PLACED ON SOME FISHING TACKLE ITEMS AT THE MANUFACTURERS' LEVEL. THE PROCEEDS OF THIS TAX GO TO THE STATE NATURAL RESOURCE AGENCIES FOR PROJECTS TO IMPROVE RECREATIONAL FISHING. THIS PROGRAM, KNOWN AS DINGELL-JOHNSON OR D-J AFTER ITS ORIGINAL CO-SPONSORS, HAS BEEN THE CORNERSTONE OF STATE RECREATIONAL FISHING PROGRAMS FOR ALMOST 30 YEARS. ITS ONLY PROBLEM IS THAT THE RECEIPTS FROM THE EXCISE TAX HAVE FAILED TO KEEP UP WITH THE INCREASED PRESSURE ON FISHERY RESOURCES AND THE INCREASED NEEDS OF STATE FISHERY AGENCIES.

RECREATIONAL BOATERS, INCLUDING FISHERMEN WHO USE POWER BOATS, PAY ANOTHER USER TAX FOR WHICH THEY RECEIVE VERY LITTLE BENEFIT. THIS IS THE 9 CENTS A GALLON TAX ON GAS, THE SO-CALLED MOTORBOAT FUELS TAX. WHEN WE RAISED THE TAX FROM 4 CENTS TO 9 CENTS LAST YEAR, ALL OF US IN CONGRESS WERE VERY CAREFUL NOT TO LABEL THE INCREASE A NEW TAX, BUT A "USER FEE" THAT WOULD PROVIDE DIRECT BENEFITS IN THE FORM OF BETTER ROADS AND OTHER BENEFITS TO THE PEOPLE PAYING THE TAX.

WELL, THE PEOPLE PAYING THE TAX ON GAS FOR THEIR RECREATIONAL BOATS ARE NOT GETTING MUCH OF A BENEFIT. THEORETICALLY, THAT PORTION OF THE GAS TAX ATTRIBUTABLE TO MOTORBOAT FUELS IS FIXED BY THE SECRETARY OF THE TREASURY AND PLACED INTO TWO FUNDS; THE BOATING FUND AND THE LAND AND WATER CONSERVATION FUND. HOWEVER, BOTH THE BOATING FUND AND THE LAND AND WATER CONSERVATION FUND HAVE RECEIVED ONLY TOKEN APPROPRIATIONS. OF THE $45 MILLION AUTHORIZED ANNUALLY FOR THE BOATING FUND, ONLY $5 MILLION HAS EVER BEEN APPROPRIATED. THE LAND AND WATER CONSERVATION FUND RECEIVES FUNDS FROM OTHER SOURCES, SUCH AS OCS REVENUES. WHILE THE APPROPRIATIONS UNDER THE LAND AND WATER CONSERVATION FUND HAVE BEEN HIGHER, THEY HAVE RARELY BEEN FOR PROJECTS THAT PROVIDED ANY BENEFIT FOR RECREATIONAL BOATERS.

THIS LEGISLATION WOULD RECTIFY THIS SITUATION. IT WOULD DIRECT THE PROCEEDS FROM THE MOTORBOAT FUELS TAX INTO THE PROGRAMS THAT MOST BENEFIT FISHERMEN AND RECREATIONAL BOATERS. IT WOULD LEAVE THE BOATING FUND INTACT; UP TO $45 MILLION COULD

BE USED FOR STATE BOATING SAFETY PROGRAMS. ANY AMOUNT THAT IS NOT APPROPRIATED FOR THESE PURPOSES WOULD GO THE THE SPORT FISH RESTORATION PROGRAM. THIS WOULD INSURE THAT ALL OF THE MOTORBOAT FUELS TAX IS USED FOR PURPOSES THAT BENEFIT BOATERS AND FISHERMEN. THE LEGISLATION WOULD ALSO DIVERT CURRENT IMPORT DUTIES ON FISHING TACKLE AND PLEASURE CRAFT INTO THE SPORT FISH RESTORATION PROGRAM.

THIS LEGISLATION WOULD ALSO EXPAND THE CURRENT TAX ON FISHING TACKLE TO INCLUDE VIRTUALLY ALL FISHING TACKLE ITEMS. IT MAKES NO SENSE TO REQUIRE PEOPLE WHO MAKE FISHING RODS TO PAY A TAX BUT NOT TO REQUIRE FISH HOOK MANUFACTURERS TO PAY THE SAME TAX. DURING HOUSE CONSIDERATION OF THE LEGISLATION, WE MADE A NUMBER OF CHANGES IN THE TAX PROVISIONS TO CLARIFY THE ITEMS TAXED AND ELIMINATED SOME ITEMS THAT ARE SUBJECT TO USES OTHER THAN FISHING. WE BELIEVE THAT THE ITEMS INCLUDED IN THE HOUSE-PASSED BILL ARE APPROPRIATE AND THE TAX PROVISIONS CAN BE EQUITABLY ENFORCED BY THE INTERNAL REVENUE SERVICE.

MONEY GOING TO THE PROGRAM WOULD BE ALLOCATED AMONG THE STATES UNDER THE SAME FORMULA UNDER WHICH CURRENT FUNDS ARE ALLOCATED; THAT IS, BASED ON THE NUMBER OF PAID FISHING LICENSES SOLD AND THE AREA OF THE STATE. IN ADDITION, WE HAVE MADE A NUMBER OF CHANGES IN THE LEGISLATION TO INSURE THAT, IN COASTAL STATES, NEW FUNDS WILL BE DIVIDED EQUITABLY BETWEEN FRESH AND SALT WATER PROJECTS AND THAT AT LEAST 10 PERCENT OF THE D-J MONEY WILL BE USED TO PROVIDE FOR ACCESS PROJECTS THAT WILL BENEFIT MOTORBOAT USERS.

MR. CHAIRMAN, H.R. 2163, WITH ITS TRUST FUNDS, TAX PROVISIONS, ACCOUNTS AND SUBACCOUNTS, IS FAIRLY COMPLEX LEGISLATION, BUT IT ACCOMPLISHES TWO SIMPLE AND WORTHWHILE GOALS: RETURNING THE BENEFITS OF A USER TAX TO THE USERS AND IMPROVING THE QUALITY OF FISHING AND BOATING IN THIS COUNTRY. AS SUCH, IT REPRESENTS GOOD FISHING, GOOD BOATING AND GOOD PUBLIC POLICY. WE URGE YOU TO GIVE IT YOUR SUPPORT.

Senator **Packwood**. Next we will hear from G. Ray Arnett, the Assistant Secretary for Fish and Wildlife and Parks of the U.S. Department of the Interior.

Mr. Arnett, you have a long statement that will be placed in the record. I hope you will pattern your testimony after that of Congressman Breaux and be able to abbreviate as much as possible.

STATEMENT OF HON. G. RAY ARNETT, ASSISTANT SECRETARY, FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.

Mr. **Arnett**. Thank you, Mr. Chairman and members of the committee.

I think Mr. Breaux did a wonderful job, and maybe I ought to just say, I second that. But, basically speaking, I think you know that this bill is a tax and that the method of apportionment of D.J. money has remained the same since about 1950. Though there have been some administrative changes, this is really the first opportunity that has come along to allow an increase in the Dingell-Johnson bill. The bill that the committee is considering will go a long way to answering many needs for additional funds that the States have identified.

The States have identified at least $134 million for restoration programs, and this proposed bill that is before you gentlemen would go a long way to meet that. The administration supported the Dingell-Johnson expansion bills during their consideration in the 97th Congress, and supports this legislation's goal of bolstering the sport fishing restoration program primarily because, in large part, as Mr. Breaux and others pointed out, those taxed are the recipients of the benefits and that it is basically, a user pay tax we support.

I would be happy to answer any of your questions and submit the longer testimony for your record, as suggested, Mr. Packwood.

Senator **Packwood**. Mr. Arnett, I have a question from Senator Wallop. I understand that there has been quite a bit of discussion with the Office of Management and Budget concerning the inclusion of the excess motorboat fuels tax money in the Dingell and Johnson fund. What is your personal feeling on this issue?

Mr. **Arnett**. Can I take the fifth amendment on that?

Senator **Packwood**. I think we understand your answer.

Mr. **Arnett**. Well, sir, the administration—I think the Treasury Department did a very good job of expressing the administration's position, and I am certainly not an expert in this area. And I have been asked to convey a strong opposition to the provisions for several reasons, that were well-defined for you by the Treasury Department. I really cannot say that I understand the taxable reasons for that, but I can say that I respect the Treasury and the OMB position and would support their positions.

Senator PACKWOOD. Another question from Senator Wallop. How would eliminating the motorboat fuels tax revenue impact D.J. expansion efforts?

Mr. ARNETT. How would eliminating the tax?

Senator PACKWOOD. Yes.

Mr. ARNETT. I think it would greatly affect it. The most current fiscal year for which we have any final figures, I believe, is something around $44 million. And there are varying estimates as to the amount of money that this portion of the bill would produce. It could range from $20 million to $50 million annually. The other two funding sources would produce an additional $28 million, estimated. So dropping the motorboat fuel tax could result in losing more than half of the expected revenue, I believe.

Senator PACKWOOD. Mr. Secretary, thank you. I have no questions and I understand your testimony exactly.

Sparky.

Senator MATSUNAGA. Thank you, Mr. Chairman.

Mr. Arnett, I have one question which might be a real help to sport fishermen in Hawaii. What are the funds which are accumulated from the tax used for?

Mr. ARNETT. In your case, Mr. Senator, we have broken this down by the States for the interest of the members of the committee. In the State of Hawaii, we have used the funds to develop some 26 offshore fish attracters that have increased fishing harvests an estimated 4 million pounds in 1980. In addition, the funds supported the State's collection of baseline data and information in cooperation with the Federal agencies as was needed for a comprehensive fish management plan for the northwest Hawaiian Islands. I am sure you are familiar with that. We just had a seminar in Hawaii about 1 month or 6 weeks ago that which I had the privilege of attending—a very fine seminar. The northwest Hawaiian Islands area has been estimated at 150 million pounds of fish in the near shore zone. The D.J. money was also used to develop artificial reefs for enhancing fishing successes, and is used for providing intensive management to enhance limited fresh water resources. The future programs will attempt to maintain some 50 offshore fish attraction units and will expand significantly the artificial reef program. I believe the expanded bill would increase Hawaii's apportionment from about $328 million to approximately $900 million—thousand, I am sorry, thousand dollars. I have been hanging around the Congress too long up here. I say millions and billions—a million here and a million there. So that increase is $328,000 to about $900,000, approximately triple the apportionment that presently would go to the State of Hawaii.

Senator MATSUNAGA. Well, I must commend you and congratulate you on anticipating questions and having the answers. So I would like it noted in the 201 file for your excellent performance.

Mr. ARNETT. Thank you, Senator.

Senator PACKWOOD. It was good to have you with us, Mr. Secretary.

Mr. ARNETT. Thank you.

[The prepared statement of Hon. G. Ray Arnett follows:]

STATEMENT OF G. RAY ARNETT, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON FINANCE, SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT, U.S. SENATE ON TITLE II OF H.R. 2163, PROPOSED SPORT FISH RESTORATION EXPANSION LEGISLATION, AND TAX TREATMENT OF THE NATIONAL FISH AND WILDLIFE FOUNDATION

August 3, 1983

Mr. Chairman, I appreciate the opportunity to appear before this Committee to discuss Title II of H.R. 2163, as passed by the U.S. House of Representatives. This bill would provide additional funds for State sport fish restoration projects under the Dingell-Johnson, or D-J, Act. This Administration supported D-J expansion bills during their consideration in the 97th Congress. I am particularly pleased to be able to testify because during my seven years as Director of the California Fish and Game Department, I was in a position to evaluate the substantial accomplishments of the D-J program that combines effectively the talents of State and Federal fishery agencies.

Fishing is among the most popular of all the outdoor recreational sports engaged in by Americans today. It provides wholesome outdoor recreation whether the angler is fishing in local waters with doughballs or chicken livers for tonights dinner or is a more sophisticated fisherman who is seeking isolated areas and trophy species. Fishing can provide something for all of us in the form of recreation, entertainment, and food. During the past 15 years, the number of anglers has been increasing at a rate of nearly 1 million per year and totals approximately 54 million today, almost 1 in 4 Americans. In 1980 these people fished more than 1.1 billion man-days and spent approximately $17.3 billion in pursuit of their sport.

As interest in the sport has grown, the task of providing quality fishing experiences to the expanding multitude of anglers has become more difficult. This responsibility, which is shouldered primarily by State fish and wildlife agencies, is complicated by the fact that today's fishermen are growing not only in numbers, but also in skill and mobility, thus creating a greater demand on the resource. In addition, fish habitat, like many other types of natural areas, is succumbing more and more rapidly to development and overuse pressures.

The Dingell-Johnson Act was passed by Congress in 1950 to assist the States in counterbalancing these pressures by actively managing fishery resources throughout the country. The program was initiated in the post-World War II era (1952) when it became apparent to States that management techniques more effective than the traditional stocking and enforcement efforts would be needed to provide both quality and quantity angling to the public. However, the States were seriously hampered in their efforts to provide better fishing because of a serious deficiency in funds. The meager $20-$30 million in annual license revenues simply wasn't sufficient to do the job. Help was needed. The passage of the Federal Aid in Sport Fish Restoration Act in 1950 and the apportionment of funds in fiscal year 1952 provided the help. Since its passage, D-J has provided a sound base for many of the States' fishery programs. Although this legislation has been amended several times since its inception to change administrative provisions, the basic tax and the method of apportionment have remained the same.

The D-J Act provides that a 10 percent manufacturer's excise tax be placed on fishing rods, reels, creels, and artificial lures, baits and flies, and that these funds be made available to the States and territories for sport fish restoration and management projects. The tax, paid by the manufacturer or importer and collected by the Treasury Department, is permanently appropriated to the U.S.

Fish and Wildlife Service for apportionment. Each State's share is based 60 percent on the number of licensed sport fishermen and 40 percent on the land and water areas of the State. No State may receive more than 5 percent or less than 1 percent of the total. Puerto Rico receives 1%, the Virgin Islands, Guam, American Samoa and the Northern Marianas each receive one-third of 1 percent.

The cost of each D-J project is borne 75 percent by Federal funds and 25 percent by State funds. Most State matching money is derived from sport fishing license revenues. Thus, anglers pay the bill for fish management through the taxes they pay on fishing tackle and the fishing licenses they buy. In general, then, the program is supported by the beneficiaries. For D-J projects, the States plan and perform the work. A computer reference service is maintained at the Denver Colorado Public Library which the States can query to obtain information on previous research projects of a similar nature to aid in planning. The Service reviews the project to insure adherence to the law, provides assistance, if necessary, in planning the project, sets standards for performance and monitors progress. However, if the States comply with the law they can spend the money apportioned to them on any project they so desire. Since the inception of the program, over $400 million in D-J funds have been apportioned to the States.

The types of projects undertaken by the States with this money have been numerous and varied. A major effort has been made to create new places to fish. To date the State fish and wildlife agencies have constructed or restored 348 public fishing lakes encompassing 43,250 surface acres with a total investment of $34.2 million. Together, these lakes provide over 3 million days of angling annually. Providing more fishing does not always need to be accomplished through the acquisition or creation of new areas. Over 911,449 acres of existing lakes and 2,597 miles of streams have been made available to fishermen through improved public access. A total of 3,100 access sites encompassing nearly 33,535 acres have been acquired or developed with a total investment of $20 million. Providing access may be as simple as acquiring a small strip of land adjacent to a river or lake that can be used for parking, or as major as constructing new boat launching ramps and fishing piers. These facilities benefit not only anglers, but also other recreationists such as canoeists, wildlife observers and pleasure boaters.

In addition to creating new fishing areas and improving access to existing areas, D-J has enabled the States to improve their management techniques through research. Millions of acres of fish habitat are protected each year through management activities designed to modify, prevent or mitigate the impacts of development, stream alterations and other practices that can be so destructive to aquatic areas. Construction of current deflectors, check-dams and overhangs has been helpful in improving trout streams that are naturally deficient in pools, riffles or covers.

Marine fishery projects have historically received approximately 11 percent of annual D-J apportionments. These projects include basic research, information and data surveys, and providing access.

To summarize, the Dingell-Johnson program has been extremely successful in improving the management of this nation's fishery resource, thereby creating opportunities for increasing numbers of Americans to partake of this resource. Current demand on the resource, however, exceeds the ability of State fishery agencies to meet the demand. For instance, a 1982 survey by the American Fisheries Society showed that, while the States spent over $286 million on fisheries in the most recent complete fiscal year, there was a need for an additional $134 million. The same survey determined that, of the additional financial needs of State recreational fishery programs, approximately 82 percent of new funds would be committed to construction, management and land acquisition activities.

H.R. 2163 would provide three sources of funds for the D-J program. First, the current 10 percent manufacturer's excise tax on rods, reels, creels and artificial lures, baits, and flies would be extended to virtually all items of sport fishing equipment. Included would be certain fishing lines, fishing spears, underwater spear guns, items of terminal tackle, and other similar gear used for sport fishing. In addition to generating an additional estimated $8 million for the D-J program, this would rectify the inequity in the current Act where only a few items of sport fishing equipment are taxed. Included in these figures would be a new 3 percent tax on electric trolling motors. This item is used almost exclusively for sport fishing and has greatly increased the fishing impact on fish populations. This particular provision would provide a method for users to alleviate some of that impact and we support its enactment. The House Ways and Means Committee eliminated fish finders from coverage by this 3 percent tax. We regret that action because fish finders are extremely effective in increasing the catch of many freshwater species. A fisherman with a fish finder can catch more fish, therefore, placing more pressure on the resource. The Department feels that this equipment should be taxed, although we are not asking you to do that in this legislation.

Second, H.R. 2163 would provide additional D-J funds by including the current import duties on fishing tackle, yachts, and pleasure craft. This is estimated to generate $20 million annually without imposing a new tax. We fully support the inclusion of these revenues to the D-J fund.

Third, this bill would add to the D-J fund all motorboat fuels tax receipts in excess of the amount appropriated for the Boating Safety Fund. This would result in an additional annual increment of up to $51 million beginning in FY 84 and increasing thereafter, for the D-J program. Mr. Chairman, since testifying before the House on this bill, I have received additional guidance from the Office of Management and Budget on the motorboat fuels tax provision. Although I am not the expert in this area, I have been asked to convey strong opposition to this provision for several reasons. First, the additional revenues generated by the expanded tax and by earmarking import duties would, in total, nearly double the current funding for the D-J program. OMB believes that in the current overall budgetary environment, an 80 percent expansion of the program is all the Nation can afford. Therefore, earmarking motorboat fuel tax receipts, which would mean that the program would be more than tripled, is neither necessary nor appropriate.

In addition, it is only logical that motorboat fuel tax revenues collected from the boating community be used to defray costs the Federal Government incurs in operating existing programs for the benefit of that community. Therefore, the Administration recommends that these revenues be used to support the wide range of services provided by the Coast Guard to the boating community.

H.R. 2163 would make other changes in the D-J program as well. The bill authorizes the Secretary to fund up to 75 percent of the initial costs of land acquisition or facility construction projects, and to approve projects using future apportionments subject to the availability of funds. The present D-J Act has been interpreted so as not to allow installment purchases over multi-year periods using funds yet to be apportioned. For example, the amendment would make it clear that a State could enter into a long-term agreement for the purchase of an extensive land tract rather than be forced to acquire it piecemeal year by year and hope that ultimately the entire area could be obtained. Of course, commitments under this provision would still be contingent on the availability of funds. We support this provision.

The bill would also require coastal States to allocate the new funds derived from this bill proportionally between freshwater and marine projects. According to the 1980 National Survey of Fishing and Hunting, 12.3 million people fished in saltwater in that year. This represents 29 percent of all fishermen. These people spent approximately $509 million on retail purchases of equipment, thereby making a substantial contribution to the D-J fund through the excise tax calculated on manufactured value of this equipment. The Administration does not oppose the allocation of D-J funds in this manner. However, we prefer that coastal state agencies be allowed full discretion in application of their D-J funds. This would give the professional sport fishery managers who are most knowledgeable the ability to direct the funds where they are most needed. We have initiated discussions with the National Oceanic and Atmospheric Administration on an agreement that will give them the opportunity to review marine projects at the Regional level. This should aid in preventing duplication and insure proper coordination.

H.R. 2163 would allow a State to use up to 10 percent of its apportionment to pay up to 75 percent of the cost of an aquatic resource education program. We support this discretionary authority.

Another change in the current program specified by this bill is that a State would be required to allocate 10 percent of its annual apportionment to boating facilities. The money not so obligated after 2 years would revert to the Department for use in sport fishery research. We have the capability to implement this requirement and support its inclusion in H.R. 2163.

Under the bill, the amount allotted to the Service for administrative expenses would be reduced from 8 percent to 6 percent. It is our program policy to use administrative funds conservatively and the Service has been very careful to keep these costs down. While 8 percent is currently allowable, the 30-year average has been 6.4 percent, exceeding 7 percent only 9 times during the period. The additional funds provided by this bill could be apportioned without a substantial increase in administrative costs.

Finally, the bill would delay the time for payment of the excise tax to the succeeding quarter following sale of the taxable item, and in the case of items sold during the quarter ending September 30, at such time as the Secretary shall prescribe. The Treasury Department has submitted the Administration's position on this issue.

National Fish and Wildlife Foundation

Mr. Chairman, let me turn briefly to the National Fish and Wildlife Foundation. Subtitle C of H.R. 2163 describes the tax treatment of this foundation, which would be established by another bill, H.R. 2809. We recommend that Subtitle C of H.R. 2163 be deleted and that H.R. 2809, as passed by the House, not be enacted. H.R. 2809 would establish the National Fish and Wildlife Foundation as a Federally chartered, charitable, nonprofit corporation to encourage and administer donations of real or personal property, or interests therein, in connection with United States Fish and Wildlife Service programs and other fish and wildlife conservation activities in the United States. The Foundation would also be authorized to make acquisitions for these purposes. The Secretary of the Interior would be authorized to provide personnel, facilities, administrative services, and support to the Foundation for five years. Appropriations of $1 million would be authorized over ten years to provide administrative support in the first five years and to match private contributions on a one-to-one basis. Subtitle C of H.R. 2163 would provide that the Foundation be treated as a 501(c)(3) organization. As such, it would be exempt from Federal income tax and would be eligible to receive tax deductible contributions. I will defer to the Department of Treasury regarding specific questions on the tax treatment of the Foundation.

The Administration strongly supports private sector initiatives for the conservation of fish and wildlife. We do not believe, however, that the creation of a Federally chartered foundation is a productive means for encouraging such initiatives.

The Secretary of the Interior already has general authority to accept gifts in support of Fish and Wildlife Service programs, including donations of both real and personal property. Subject to certain restrictions, the Secretary can then convert gifts not inherently useful to fish and wildlife conservation and apply the Service's priorities in allocating the proceeds. While the Foundation could augment these capabilities to some extent, we believe that increased private participation in fish and wildlife conservation can be achieved without the legislative creation of a foundation and without the expenditure of additional Federal funds.

In our view, the private not-for-profit conservation community does an outstanding job of protecting many important natural resources. We believe that a more productive course of action than H.R. 2809 would be to consider ways in which these organizations can be strengthened. We should encourage private initiative, not displace it. Those not-for-profit organizations that are willing to work for natural resource conservation on the ground are essential. They, rather than a new legislatively created foundation, deserve Administration and Congressional support.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions you or other Committee members might have.

Senator **Packwood**. We will now move on to a panel of Wes Hayden, Carl Sullivan, Gene Howard, Michael Sciulla, and Rudolph Rosen.

Gentlemen, your statements in their entirety will appear in the record, so I would appreciate it, and I am sure Senator Matsunaga would, if you could abbreviate it. I believe you know the time limits that we have for witnesses before the committee.

Mr. Hayden, please go ahead.

STATEMENT OF WES HAYDEN, LEGISLATIVE COUNSEL, THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES, WASHINGTON, D.C.

Mr. **Hayden**. Thank you, Mr. Chairman.

I am here to speak on behalf of the International Association of Fish and Wildlife Agencies regarding H.R. 2163. As you know, our membership includes State agencies in each of the 50 States, as well as Puerto Rico. For that reason, we have a very strong and impelling interest in this legislation. We have been deeply involved in the promotion of sport fishing activites for the past 30 years, since the passage of the Dingell-Johnson Act in 1952. For the past 5 years we have been engaged in efforts to get a necessary expansion of that effort. So far we have not succeeded. We think that H.R. 2163 offers the opportunity for success of that effort.

We think it is a good bill. We think it addresses the needs of all of the interests that are involved in sport fishing and recreational boating. But, before addressing the details of the bill, I think it is incumbent for us to acknowledge the important contributions that the Senate Finance Committee made last year when it, on its own initiative, developed and included in the revenue bill for the year a D-J proposal which provided a new direction, a new initiative, and offered new hope for Dingell-Johnson supporters at a time when it appeared the issue was approaching a legislative stalemate.

We recognize that contribution. We express our appreciation.

As far as the points of the bill itself are concerned, we think the most important ones are the fact that it recognizes for the first time a distinct link between sport fishing and recreational boating interests, and that it makes accommodation to address those needs. It provides for more improved boating education, safety and facilities or access objectives. In section 1 of the bill it provides $30 million the boating education safety program. It provides $15 million for Coast Guard services which are related to it.

At the same time, addressing the boating interests, it provides that 10 percent of the D-J funds in section 2 of the bill will be used for new boating facilities. That is important because current indications are that there is a definite demonstrated need for about 6,300 to 6,500 new boating access sites. At this particular time that is important for a number of reasons, including effect on boating safety because crowded lakes, and crowded rivers are a safety hazard as well as cutting down on enjoyment of the sport.

The bill properly relates the funding sources to the contributions made on a user fee basis from those involved in the program. That is important. It provides also for a division of the D-J funds between the sport—I beg your pardon—between the salt and fresh water fishing interests for the first time. Salt water people have had the short end of the stick. This is an equitable provision and should be retained in the bill. And we regard it as one of the strong points of the legislation.

We have talked about economic benefits. The results of the increase proposed in the bill would be to about triple State allocations and the figures have been mentioned for Hawaii. My statement does give figures for all the States represented by this subcommittee. I have to confess to one error. In Missouri, somebody left off a "2," and a "2" in front of it makes $2,200,000 instead of just $200,000.

I will let my statement stand for the record for the rest of the testimony in the interest of time.

Thank you for your time and attention. We simply urge that you approve the bill in its present form as a badly needed and sound piece of legislation.

Thank you, Mr. Chairman.

[The prepared statement of Wes Hayden follows:]

STATEMENT OF INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES TO SENATE FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT ON HR 2163, THE SPORT FISHING RESTORATION AND BOATING ENHANCEMENT ACT OF 1983. August 3, 1983.

Mr. Chairman, I am Wes Hayden, Legislative Counsel for the International Association of Fish and and Wildlife Agencies. I welcome and appreciate the opportunity you are affording for presentation of the Association's views on HR 2163, the Sport Fishing Restoration and Boating Enhancement Act of 1983.

As an organization committed to the conservation, development and management of the nation's fishery resources, and with members in each of the 50 states and Puerto Rico, we have a vital stake in this legislation and in the objectives which it addresses.

In our judgment it provides an entirely appropriate and urgently-needed means for extension and broadening of the initiative for creation of a viable sport fishing program that originated with passage of the Dingell-Johnson Act in 1950. Our members have been closely identified with the undertaking since its inception and, over the past five years, have given the highest priority, in concert with other D-J adherents, to efforts to secure the new sources of funding so obviously needed to satisfy escallating demands for more and better program services and facilities.

Until now those efforts have not borne the hoped-for fruit and meanwhile, state agencies have fallen further and further behind in their efforts to keep pace with the mounting program pressures with the limited financing available to them under existing allocations.

We see in HR 2163, however, the potential for change and the promise of success.

It is, in our considered judgment, a carefully crafted and balanced measure which will serve effectively the needs and interests not only of our Associaion members but those of a wider sport fishing and recreational boating constituency affected by its provisions.

And in that assessment, Mr. Chairman, there is also a keen awareness on our part of what was involved in bringing the legislation to its present stage and of the significant role which you and your Finance Committee colleagues played in the formative phase of that process.

We recognize in full measure the importance of the committee's action last summer in developing and adopting a D-J funding proposal as part of the omnibus revenue bill then being considered by Congress. In so doing you provided a new direction and a new momentum for the program initiative at a time when it appeared doomed to legislative stalemate. Even though it was subsequently dropped in conference on the revenue measure it nonetheless served as a starting point for the discussions from which HR 2163 emerged and is reflected in some of the provisions of the bill you will be considering today.

We are in your debt for having laid that foundation and commend to your attention the legislative structure that has been built upon it.

Put together in consultation between the House Merchant Marine and Fisheries Committee and Ways and Means, the measure calls for some major changes in the basic D-J program concept.

As a starting point it formally recognizes for the first time the link between sport fishing and recreational boating interests in the goals of the program and makes specific provision for that broadened objective in a revised funding mechanism prescribed under the legislation.

It addresses the need for better boating education and safety by allocating up to $30 million a year for use by states for those purposes, and provides an additional $15 million a year for essential Coast Guard services. In addition it stipulates that at least 10 percent of the money accruing to the fishing and recreational boating account shall be used for development and maintenance of new boating facilities.

A recent survey indicating that approximately 6,500 new boating sites are needed to meet existing demands graphically underscores the rationale for that provision.

Another important change is that specifing that sport fishing allocations shall be divided between fresh and salt water programs in proportion to the number of resident anglers involved in those respective activities.

Coupled with those changes, the bill's provisions for a broader funding base will have the effect of more closely relating source of the increased revenue to the contributions made in the form of user fees by participants in the expanded program, particularly in the case of boaters.

At the same time, it will bring program resources more nearly in line with demands than has been the case in prior years.

On the sport fishing and recreational boating side, the combination of revenue from the marine fuel tax, tariffs on imported fishing gear and foreign-made yachts and pleasure craft, together with the excise tax on additional domestic fishing tackle items and electric trolling motors, is expected to add at least another $70 million and perhaps more to the approximately $35 million a year now available to the states for program activities.

Even by conserative estimate that will almost triple each state's annual apportionment and cut down sharply on the present program project backlog.

According to figures supplied by the U.S. Fish and Wildlife Service, the comparison between this year's apportionment and a $90 million allocation for states represented by members of this subcommittee would look like this:

	Present	Projected
Oregon	$ 813,487	$2,230,744
Missouri	810,300	224,741
Rhode Island	327,800	900,000
Wyoming	524,484	1,440,010
Colorado	843,469	2,315,810
Hawaii	327,800	900,000
Texas	1,639,000	4,500,000
Montana	745,460	2,046,718
Louisiana	503,869	1,383,387

Even with those increases and comparable ones elsewhere in the country, however, the new resources will not meet the total demand. The most recent American Fisheries Society survey of state agency needs came up with a figure of more than $160 million.

There is, though, another side to the economics of this issue--the ratio of benefit to cost of recreational activities in general and sport fishing in particular. And it provides some impressive and encouraging statistics.

For example, the Arkansas Department of Game and Fish reported that in 1980 it got back $33 for every $1 spent on fishing and hunting management and that trout fishermen alone spend $31 million in that state that year.

A 1979 report of the Great Lakes Fisheries Commission listed resource management and rehabilitation costs for fisheries at $40 million and total economic benefits at $1.16 billion. That came out to $28 return for each $1 spent.

An even more impressive statistic comes from Fiscal 1982 operating figures of the Jones Hole federal fish hatchery in Utah. It had a budget of $300,000 for the year and produced fish accounting for an angler outlay of $39.4 million--a gaudy return of more than $130-to-1 on the plus side.

And, finally, there is the U.S. Fish and Wildlife Service survey of 1980. It showed that the nation's fishermen spent an aggregate of 857 million days and $17.3 billion on their favorite pastime in that year.

By all accounts, that number and that investment has grown substantially since then, but the evidence is already clear and compelling--sport fishig pays dividends in dollars as well as intangibles.

The bill before you today is built on that premise and is calculated to enhance those benefits. It has the widest and most varied coalition of support from affected interests ever put together on this issue. As other testimony here today will indicate, that group includes 11 of the companies holding membership in the American Tackle Manufacturers Association and accounting for majority production of several of the key items in which that organization specializes.

Their willingness to be taxed may be the most compelling evidence of all concerning the value and importance of the expanded D-J effort.

In its present form HR 2163 can serve that objective well. We urge that, having provided the initial impetus and inspiration for that legislation, you reaffirm your confidence in the cause by rejecting attempts to thwart those purposes and adopting the measure in its present form.

Your attention to this Association's views is most appreciated. If you have questions, I will be happy to respond.

Senator PACKWOOD. Thank you.
Mr. Sullivan.

STATEMENT OF CARL R. SULLIVAN, EXECUTIVE DIRECTOR, AMERICAN FISHERIES SOCIETY, BETHESDA, MD.

Mr. SULLIVAN. Mr. Chairman, my name is Carl Sullivan. I am executive director of the American Fisheries Society, which for the past 113 years has been deeply involved in matters of fisheries science and fisheries management in this country.

I am also authorized today to speak for a number of angler groups, the Bass Anglers Sportsman Society, Federation of Fly Fishermen; Theodore Gordon Flyfishermen; the Muskies, Inc., California Trout, Salmon Unlimited, Northwest Steelheaders, Striper, and a couple of others. All of these organizations of anglers nationwide are strongly supportive of H.R. 2163.

The reason we are supporting this, Mr. Chairman, is that we see the quality of the fishery deteriorating. Hatcheries are not only underfunded, but there are not enough of them. Many are in a deteriorated condition. Boating access is pathetically inadequate. There are more than 6,000 needed access areas that have been identified by the 50 States.

Streams need habitat improvement devices. We need more offshore artificial reefs. Many lakes need reclaiming. There are a thousand fisheries science problems to be researched. There are lots of opportunities in fish genetics, regarding special strains and new hybrid species. A great many things can be done to improve fisheries resources but funding is simply inadequate. The greater pressures that are being applied to the resource, the limited resource, every year is reducing that portion available to the individual angler. And the problem can be addressed only with money.

Our society has conducted a survey of the 50 States and asked them, "How much more funding do you need to adequately manage your fishery resources?" We have done this survey in each of the last 4 years. Congressman Breaux gave you the 1983 survey figure. The 1983 figure is $160 million. That is the amount the States need and it would represent a 50-percent increase in their fisheries management budgets. That is the amount needed to do the kind of job that is expected of them by the public.

Each State was asked how they would spend the money if they got it, and it breaks down as follows: About 18 percent for research, surveys, and inventories; 9 percent for land acquisition, including land for access sites, or land for a new recreational lake. Iowa, for instance, has a plan to build one new recreational lake each year. As you know, there is very little water in Iowa, and they need artificial impoundments. Nothing does quite as much for the fishery as creating water where there has been is none. Construction maintenance and development would take 42 percent; maintenance at many present facilities has been limping along and States would spend 10 percent for that purpose; for fisheries management, 20 percent; and for coordination only 1 percent.

About 8 or 10 years ago, the U.S. Fish and Wildlife Service commissioned Dartmouth University professor, Lawrence Hines, to study the Dingell-Johnson program on about its 25th anniversary. They asked Hines to tell them what was wrong with the D–J program and what was right about it.

Professor Hines talked with most of the sport fishing industry that had been paying the tax. His report says, basically, that the sport fishing industry believes in the Dingell-Johnson bill. Hines noted that D–J was returning the money to the fishery resource and manufacturers and anglers alike were getting a good return for their investments. But Professor Hines said, that if there is a problem with the Dingell-Johnson bill it is because it only includes a part of the sport fishing industry. The first thing he recommended that should be done was that the 10-percent tax should be extended to the remainder of the fishing industry. Doing that will include tackle boxes, lines, hooks, and all other essential items for fishermen. It will include gaff hooks and dip nets and all other sport fishing paraphernalia, because in the past the manufacturers of these items had been getting a free ride. These manufacturers have been benefiting from the tax paid by rod and reel and lure manufacturers. Dr. Hines said, in fact, that to impose such a tax on these previously untaxed tackle industries would terminate a subsidy that they have been enjoying for 25 years. Some will say that all of these items are not used 100 percent of the time for fishing, but as Mr. Howard of ZEBCO said before the Ways and Means Committee sometimes reels are used to fly kites. Fishing lines are used for anything that string is used for. My wife uses my minnow bucket as a scrub bucket, and you sometimes see artificial flies used in plastic gimmicks or in decorations. One might draw a D–J comparison with the Pittman-Robertson fund where the 10-percent manufactures tax is used for wildlife restoration and imposed firearms including handguns which are not used for hunting. Archery equipment is also taxed for wildlife yet only a small percent is used in hunting. Some will say that tackle boxes are used for sewing boxes and may be used for tool boxes, but the [sic] standard identification number published by the U.S. Census of manufacturers clearly points out how many tackle boxes were sold in 1980. There were 4,663,000. The Fishing Tackle Manufacturers Association annually announces exactly how many tackle boxes were sold—not sewing boxes, not tool boxes, but tackle boxes. We know how many tackle boxes are sold and how they can be identified.

In conclusion, Mr. Chairman, I would like to say that States have indicated a desperate need and that need has been repeatedly documented. All but one State can match the anticipated D–J grant money on the 3-to-1 matching basis. I suspect that when it comes right down to it, that one State too will find that matching money is available. The groups for which I speak think H.R. 2163 is a good bill; its user pay concept is consistent with good user pay legislation, and we urge that the bill be passed as it was passed by the House of Representatives.

[The prepared statement of Carl R. Sullivan follows:]

POSITION STATEMENT ON (H.R. 2163) - A BILL TO PROVIDE FOR SPORT FISHING AND BOATING ENHANCEMENT AND FOR IMPROVED BOATING SAFETY

Presented by

Carl R. Sullivan, Executive Director of the American Fisheries Society
and
Co-Chairman of the Sport Fishing and Boating Enhancement Committee

before the

Senate Finance Subcommittee on Taxation and Debt Management
August 3, 1983

Mr. Chairman, my name is Carl Sullivan, Executive Director of the American Fisheries Society, the world's oldest and largest organization of professional fisheries scientists. I am here to testify in support of H.R. 2163 and to urge its adoption by the U.S. Senate. In addition to my own organization, I am also authorized to speak on this issue for:

The Bass Anglers Sportsman Society - an organization of 450,000 bass fishermen.
Trout Unlimited - Trout fishing conservationists with chapters throughout America.
Muskies, Inc. - Dedicated muskie anglers from the north central states.
California Trout - a discerning and energetic group of California trout fishermen.
Salmon Unlimited - with more than 3,000 Great Lakes Salmon fishermen.
The Federation of Fly Fishers, Theodore Gordon Flyfishers, the American League of Anglers, STRIPER, and Northwest Steelheaders.

Mr. Chairman, the management of America's inland fisheries resources and the resources from coastal waters inside the 3-mile territorial sea, are the responsibility of the 50 states. Dwindling dollar values, combined with greatly increased pressure on these aquatic resources, have dealt a crippling blow to states' ability to manage their recreational fishery. Access to public waters (both fresh and salt) is totally inadequate and many public boat launching areas are deteriorating into obsolescence for lack of maintenance dollars. Fish hatchery capability is often inadequate for providing needed fingerling stocking, while other hatcheries are operating well under capacity because there isn't money to pay the costs. Thousands of lakes, debilitated by overfishing and unwanted species, desperately need reclamation. Promising research in the field of fish genetics, hybrids, and exotic species is woefully underfunded. New recreational lakes for water-starved areas are not being built for lack of funds, and each year excellent natural lake sites are sacrificed to other purposes. There are thousands of artificial reefs to be built, eroding shorelines to be protected, disease and parasite challenges to be met, streams to be reclaimed and stabilized, fishing piers to be constructed, auto and trailer parking facilities to be purchased and developed, and a myriad unanswered fisheries questions which must be researched. Unless large new sources of revenue are found, fishing will continue to decline at an accelerating rate.

Without exception, state fisheries agencies face critical funding shortages and many have been forced to reduce staff at a time when more help is needed rather than less. Testimony from the states will provide full details of the financial problems being faced as they attempt to compensate for declining resources, improved angling technology, and expanding public demand. In order to document and measure the total state fisheries agency funding needs, the American Fisheries Society has completed a survey of all state fisheries agency budgets. It is not an encouraging picture, as the table on the following page clearly indicates. The survey shows a pressing need for 162.85 million more dollars per year to adequately manage the nation's recreational fisheries resources. Fueled by inflation, by federal budget cuts, and growing user demands, the funding need figure has doubled from the $82.8 million reported in 1980.

The $162.85 million needed by the 64 reporting state agencies (14 states have separate fresh water and marine fisheries agencies) is 50% above the total funding (all sources) they are now receiving. According to the survey, the funds would be spent for the following purposes:

Program	No. of Agencies	Funds Needed	Proportion
Research, Surveys & Inventories	64	$29.4 Mil.	18%
Land Acquisition (Access & hatchery sites, parking, wetland preservation)	44	14.4 "	9
Construction & Development (Hatcheries, access areas, artificial impoundments, etc.)	60	68.7 "	42
Maintenance (Launching areas, public use facilities, hatcheries)	53	15.2 "	10
Fisheries Management	60	33.2 "	20
Fisheries Coordination & Admin.	28	1.6 "	1

SURVEY OF STATE FISHERIES AGENCY FUNDING NEEDS
Spring 1983

- All figures in thousands of dollars -

State	Additional Annual Funding Required for Adequate Program	State	Additional Annual Funding Required for Adequate Program
ALABAMA (2 Agencies)	2,065	MONTANA	1,750
ALASKA	7,601	NEBRASKA	1,300
ARIZONA	2,400	NEVADA	7,500
ARKANSAS	1,675	NEW HAMPSHIRE	500
CALIFORNIA	7,125	NEW JERSEY (2 Agencies)	3,017
COLORADO	1,055	NEW MEXICO	1,452
CONNECTICUT	854	NEW YORK (2 Agencies)	12,082
DELAWARE	575	NORTH CAROLINA (2 Agencies)	3,977
FLORIDA (2 Agencies)	4,410	NORTH DAKOTA	1,490
GEORGIA (2 Agencies)	2,080	OHIO	2,000
HAWAII	940	OKLAHOMA	770
IDAHO	1,200	OREGON	12,300
ILLINOIS	5,600	PENNSYLVANIA	1,872
INDIANA	627	RHODE ISLAND	695
IOWA	561	SOUTH CAROLINA (2 Agencies)	1,480
KANSAS	2,800	SOUTH DAKOTA	2,525
KENTUCKY	700	TENNESSEE	1,475
LOUISIANA (2 Agencies)	4,975	TEXAS	16,556
MAINE (2 Agencies)	1,637	UTAH	5,750
MARYLAND	615	VERMONT	430
MASSACHUSETTS (2 Agencies)	1,185	VIRGINIA (2 Agencies)	3,651
MICHIGAN	1,600	WASHINGTON (2 Agencies)	16,457
MINNESOTA	4,150	WEST VIRGINIA	1,525
MISSISSIPPI (2 Agencies)	1,091	WISCONSIN	2,166
MISSOURI	2,000	WYOMING	609
		TOTAL	$162,850

Where is the money to come from? There are many who naively suggest that it is as simple as increasing the cost of a fishing license or passing a national fish stamp. Such illusory proposals ignore political realities in state legislatures, fail to consider the high cost of license law administration, and forget the virtual impossibility of adequate enforcement. Because of problems of enforcement plus exemptions for the elderly, infirm, veterans, spouses, the young, etc. only about half of America's fishermen are licensed today. Hunting and fishing license legislation is politically super sensitive in every state and raising the needed dollars from increased license fees is not practical; in fact, it simply will not work.

The existing Dingell-Johnson legislation now imposes a 10% federal manufacturer's excise tax on fishing rods, reels, creels, and artificial lures. Though paid by the manufacturer, the cost is passed along to the fisherman. The Dingell-Johnson tax is collected from the manufacturer by the Treasury Department at no cost to the fund. It is then apportioned to the states on a matching basis (three federal dollars to one state dollar) for purposes of fisheries restoration, development, enhancement, and research. The apportionment is based on the state's total area and fishing license sales. No state can receive less than 1% and none more than 5%. Dingell-Johnson funds have been used to build approximately 400 public fishing lakes. D-J funds also have acquired and or developed 2,818 access and boat launching sites, established exciting new salmon, striped bass, and trout fisheries in countless waters, reclaimed hundreds of thousands of acres of lakes and streams, and funded many other programs aimed at improving recreational fishing opportunity. But it is not nearly enough - the job has only begun.

In February of 1970, distinguished Dartmouth College Economics Professor, Lawrence G. Hines, completed a study of the "Impact of the Dingell-Johnson Manufacturer's Excise Tax upon the Fishing Tackle Industry and Recommendations for Modification." Hines found that most tackle manufacturers like the Dingell-Johnson tax program, but objected to the incomplete coverage of the tax within the sport fishing industry. The tax was considered to be unfair because it applied to only part of the industry, although all manufacturers benefitted from the proceeds. Hines recommended that the 10% tax be extended to all products of the sport fishing industry.

Over the past five years a national coalition of organized sport fishermen, recreational boaters, conservationists, state fishing agencies, fishing tackle and boating manufacturers has developed in support of the concept that the entire sport fishing industry and the public which uses the resource should share in the support of sport fishing and boating enhancement. The goal of our coalition, is an amendment to the Dingell-Johnson tax which would add receipts from the marine fuel tax, which would add a 3% tax on electronic trolling motors, and which would extend the 10% excise tax to fishing lines, tackle boxes, fish hooks and all other sport fishing accessories. Finally, the bill would direct that import duties paid on foreign manufactured fishing tackle and recreational boats be directed to the sport fishing and boating enhancement fund.

There are those who contend that these additional tackle items should not be taxed because they are sometimes used for other purposes or because defining them is too difficult. Some skeptics suggest that there is real confusion between tackle boxes, sewing boxes, and tool boxes, yet in the U.S. Census of Manufacturers, tackle boxes have their own listing and their SIC (Standard Industry Classification) #(39491) assigned by the Office of Management and Budget. The American Fishing Tackle Manufacturers Association Annual Market Summary reports on the numbers of tackle boxes (not tool or sewing boxes) sold each year, and the 1980 National Hunting and Fishing Survey includes tackle boxes in its list of fishing equipment purchases. Certainly an occasional tool box will be used for tackle or a tackle box for sewing, but such use is insignificant when compared to the total. No system is absolutely perfect. Fishing reels are sometimes used to fly kites, landing nets used to catch butterflies, minnow pails used for scrub buckets, artificial flies used for decoration, fishing line used as string in a hundred ways, etc. In total, however, these are all very minor uses and are not significant factors in total sales. I call the Committee's attention to the PittmanRobertson manufacturers excise tax on sporting arms and ammunition in support of federal aid to wildlife restoration. The 10 or 11% excise tax is paid on hand guns and on all archery equipment, with only a minor part of these items used for hunting. All fishing equipment manufacturers have benefitted from past Dingell-Johnson expenditures and equity demands that the entire industry share in the tax support. After all the cost is inevitably passed forward to the consumer in any event.

In recent years, America's anglers have paid barely over 50 cents each per year in support of Dingell-Johnson sport fish restoration. While hunters have paid roughly $5.00 each into Pittman-Robertson wildlife restoration coffers. Passage of H.R. 2163 and the creation of the proposed Breaux-Forsythe Trust Fund will raise that figure to an average of just under $2.00 per fisherman. That is a modest amount indeed and anglers have indicated their ready willingness to pay the bill.

Mr. Chairman, there have been some who have questioned the states ability to provide the required matching money for the projected increased grants. To permanently lay this issue to rest, we have surveyed the 50 states and all but one reports the ability and the desire to provide the necessary matching support.

The need for substantial increases in state fisheries budgets has been clearly and dramatically documented. The equity of requiring those who benefit to share the cost is self-evident. The professional fisheries managers, employed by states, have the experience, knowledge and techniques available to greatly improve recreational fishing opportunities. The organized recreational boaters and fishermen of America have said they are ready to pay the tab. H.R. 2163 is user-pays legislation in the finest tradition. It is fair and equitable to everyone, and will constitute a sound investment in the future of this nation's sport fishery as well as the future of the sport fishing/recreational boating industry.

Our united group of fishing organizations asks that you pass H.R. 2163 as it now stands, and we strongly endorse its tax payment date deferral provisions, its equitable split between fresh water and marine allocations, and its commitment to boating facilities and boating safety. Though we do not ask for Senate reinstatement, we were disappointed to see electronic fish finders deleted by the House, for no other item of fishing tackle places greater pressure on fisheries resources.

Thank you for the opportunity to be heard on this extremely important natural resource issue.

Senator Packwood. Thank you.
Mr. Howard.

GENE HOWARD, VICE PRESIDENT, ZEBCO, TULSA, OKLA.

Mr. Howard. Thank you, Mr. Chairman.

My name is Gene Howard. I am vice president of ZEBCO, a fishing tackle company located in Tulsa, Okla. ZEBCO is a division of Brunswick Corp. And Mercury Marine, headquartered in Fond-du-Lac, Wis., is also a division of Brunswick Corp., and they join us in support of H.R. 2163, including the expansion of excise tax to Mercury trolling motors. My remarks this morning will first address the issue of the excise tax deferral of H.R. 2163, which we have tried for many, many years to get passed by Congress. And it is very, very important to us, and I will tell you why. And then I want to conclude with some comments relative to the remaining provisions of the bill.

ZEBCO is one of the companies which has initially supported the imposition of an excise tax on our products back in 1952, and we have never changed that position. The company has always recognized that a development program to promote the sportfishing industry was in the best long-term interest, and it is more important now than ever before to attract new participants and to retain the old participants. And perhaps the most critical long-range issue facing the sportfishing industry is the degree of success the participant has when he goes fishing. A reasonable chance of catching fish is increased if there are more lakes and, most important, more fish in those lakes. So, with the rapid increase in population growth over the past 25 years, it is even more important today that the restoration programs funded from the sale of our own products and taxed on our own initiative be maintained and increased. And the majority of the reel and rod tackle companies in the United States share this same opinion. It is inconceivable to us how any company in the sportfishing industry could oppose the inclusion of their products in the D-J tax base, the income from which has meant so much to the success of sportfishing in America.

The big thing that has happened since we imposed the tax in 1952 was that the calendarization of our sales have changed. In my recorded comments, I indicated that over the years the fact that we have offered dating, and the reason we offer dating in the industry is because we sell to jobbers. Over 50 percent of the sales were directed at jobbers. They, in turn, must sell to the retailers. It takes a long time in the cash-to-cash cycle to get our money. And this is one of the real reasons that the sportfishing industry has grown in the past few years, because dating sometimes is more important than the price of the products. They just cannot pay for it until they get their money. So, we think that that part in the bill is very, very important to us as an industry, and the pattern that I indicated in my testimony which ZEBCO has experienced since the bill was enacted, we believe, is representative—fairly representative of the sportfishing industry.

The Treasury Department has always opposed this deferral portion of the bill, and they have changed their position several times. And the reason they oppose it, they first said it would be very, very expensive for the Treasury. But they only act as a collection agency. As you know, we remit the funds to them and they disburse them to States at the close of the calendar year. And we will grant that they are denied use of the funds for that period of the deferral which is included in H.R. 2163. But I want to make it very, very clear that it was never our intent in 1952 to fund the U.S. Treasury by this small sportfishing industry for any amount and for any period of time. They were merely to act as a collection agency. And they have to recognize that if it becomes expensive to the Treasury to borrow additional money, that becomes income to us as manufacturers. And they are going to get 50 percent of it back on a quarterly basis anyway. So, the effect on Treasury is very, very minimal.

So, in summary, I would say that the method of selling, and the subsequent collection has changed, and the proposed legislation should not be considered special interest or precedent for any other excise tax interests since it was voluntary tax on our part.

Included in my testimony is also a position paper that was adopted by several fishing tackle companies. I would like to read just part of it. We say that we, the undersigned, are united and dedicated in our belief that the regeneration and enhancement of general fish population and the resulting degree of success in catching fish is the most critical issue facing the sportfishing industry, now and during the next 25 years. Therefore, we enthusiastically support measures which will increase the revenue available to the Dingell-Johnson program.

Our support at that time was for H.R. 1724, which Congressman Breaux spoke so eloquently about just a few minutes ago. And that was signed by over—the companies that signed this position paper represent approximately 70 to 80 percent of all the reels sold and 60 to 70 percent of all the rods sold here in America. So we urge the passage, with the exception that we think the timing for the expansion of the excise tax to certain products should be changed from January 1 to August 1. And that is because our programs, our prices are already in effect. We are on a tackle year basis from August 1 through July 31, and it is going to create a lot of havoc in the industry to go back and try to straddle January 1, and 10 percent is too much for the manufacturers to be able to absorb that tax.

[The prepared statement of Gene Howard follows:]

STATEMENT OF

GENE HOWARD
VICE PRESIDENT
ZEBCO, A BRUNSWICK COMPANY

BEFORE THE

SENATE FINANCE COMMITTEE

TAXATION AND DEBT MANAGEMENT SUBCOMMITTEE

IN SUPPORT OF

HR 2163

AUGUST 3, 1983

MR. CHAIRMAN: MY NAME IS GENE HOWARD AND I AM VICE PRESIDENT OF ZEBCO, A FISHING TACKLE COMPANY LOCATED IN TULSA, OKLAHOMA. ZEBCO IS A DIVISION OF BRUNSWICK CORPORATION. MERCURY MARINE, HEADQUARTERED IN FOND-DU-LAC, WISCONSIN, IS ALSO A DIVISION OF BRUNSWICK, AND THEY JOIN US IN SUPPORT OF HR 2163, INCLUDING THE EXPANSION OF EXCISE TAX TO MERCURY TROLLING MOTORS. MY REMARKS TODAY WILL FIRST ADDRESS THE ISSUE OF THE EXCISE TAX DEFERRAL OF HR 2163. I WILL CONCLUDE WITH COMMENTS RELATIVE TO THE REMAINING PROVISIONS OF THE BILL.

EXCISE TAX DEFERRAL

ZEBCO HAS ALWAYS SUPPORTED THE VOLUNTARY TAX OF SPORTFISHING ITEMS TO FUND A FISH RESTORATION PROGRAM

ZEBCO IS ONE OF THE COMPANIES WHICH INITIALLY SUPPORTED THE IMPOSITION OF AN EXCISE TAX ON OUR PRODUCTS IN 1952 AND HAS NEVER CHANGED ITS POSITION. THE COMPANY HAS ALWAYS RECOGNIZED THAT A DEVELOPMENT PROGRAM TO PROMOTE THE SPORTFISHING INDUSTRY WAS IN ITS BEST LONG-TERM INTEREST. IT IS MORE IMPORTANT NOW THAN EVER BEFORE TO ATTRACT NEW PARTICIPANTS AND TO RETAIN THE OLD PARTICIPANTS. PERHAPS THE MOST CRITICAL LONG-RANGE ISSUE FACING THE SPORTFISHING INDUSTRY IS THE DEGREE OF SUCCESS THAT A PARTICIPANT HAS WHEN HE GOES FISHING. A REASONABLE CHANCE OF CATCHING FISH IS INCREASED IF THERE ARE MORE LAKES AND, MOST IMPORTANT, MORE FISH IN THOSE LAKES. WITH THE RAPID INCREASE IN POLUTION GROWTH OVER THE PAST 25 YEARS, IT IS EVEN MORE IMPORTANT TODAY THAT THE RESTORATION PROGRAMS FUNDED FROM THE SALE OF OUR OWN PRODUCTS AND TAXED ON OUR OWN INITIATIVE BE MAINTAINED AND INCREASED. THE MAJORITY OF THE REEL AND ROD TACKLE COMPANIES IN THE U.S. SHARE THIS SAME OPINION. IT IS INCONCEIVABLE TO US HOW ANY COMPANY IN THE SPORTFISHING INDUSTRY COULD OPENLY OPPOSE THE INCLUSION OF THEIR PRODUCTS IN THE DINGELL-JOHNSON TAX BASE, THE INCOME FROM WHICH HAS MEANT SO MUCH TO THE SUCCESS OF SPORTFISHING IN AMERICA.

FISH RESTORATION PROGRAMS ARE DEPENDENT ON THE GROWTH OF THE SPORTFISHING INDUSTRY

ONE OF THE WAYS TO INCREASE THE AVAILABILITY OF DINGELL-JOHNSON FUNDS IS FOR MANUFACTURERS TO INCREASE THEIR SALES. HISTORICALLY, THE FISHING TACKLE YEAR BEGINS ON AUGUST 1, WITH NEW PRODUCTS, PRICES AND PROGRAMS, AND ENDS ON THE FOLLOWING JULY 31. IN 1952, WHEN THE LEGISLATION AND RELATED TIMING OF EXCISE TAX PAYMENTS WAS ENACTED, ZEBCO GENERATED 20% OF ITS ANNUAL VOLUME FROM AUGUST 1 THROUGH DECEMBER 31.

MARKETING TACTICS DESIGNED TO GET THE PRODUCTS ON CUSTOMERS' SHELVES AHEAD OF THE NORMAL SELLING SEASON (JANUARY-MAY) RESULTED IN THE PRACTICE OF OFFERING AN EXTENDED PERIOD OF TIME FOR PAYMENT IF THE CUSTOMER WOULD ACCEPT DELIVERY AHEAD OF THE NORMAL SHIPPING PERIOD. KNOWN IN THE INDUSTRY AS "DATING" OR "TERMS", THIS TACTIC MET WITH ENOUGH SUCCESS SO THAT BY 1960 ABOUT 30% OF ZEBCO'S SALES WERE FROM AUGUST THRU DECEMBER. BY 1965, OVER 35% OF SALES WERE GENERATED IN THE AUGUST THRU DECEMBER PERIOD, INCREASING TO OVER 40% IN RECENT YEARS AND SOLD UNDER SOME FORM OF DATING. IT IS OUR OPINION THAT THIS PATTERN IS FAIRLY REPRESENTATIVE OF THE SPORTFISHING INDUSTRY.

THE CALENDARIZATION OF SALES HAS CHANGED AS A RESULT OF DATING PROGRAMS

ALL THIS TO SAY THAT OVER THE YEARS SINCE THE EXCISE TAX LEGISLATION WAS ENACTED, THE CALENDARIZATION OF SALES HAS CHANGED AS A RESULT OF PROGRAMS AND PROMOTION WHICH, IN TURN, HAS RESULTED IN INCREASED SALES. OUR EXPERIENCE HAS BEEN THAT IF THE PRODUCTS CAN BE PLACED IN THE HANDS OF THE CUSTOMER, HE WILL FIND A WAY TO MOVE THEM AHEAD OF THE NORMAL SELLING SEASON ALSO.

DATING IS SOMETIMES MORE IMPORTANT THAN PRICE

OVER 50% OF THE SPORTFISHING INDUSTRY SALES ARE TO WHOLESALERS OR JOBBERS WHO, IN TURN, MUST OFFER DATING TO THEIR RETAIL CUSTOMERS. THIS TYPE OF OUTLET HISTORICALLY HAS BEEN UNDERCAPITALIZED AND MUST RECEIVE THEIR MONEY BEFORE THEY CAN PAY. THIS IS AN ADDITIONAL REASON WHY DATING IS SO PREVALENT IN THE INDUSTRY.

THE ACCEPTANCE OF SALES TERMS AFFECTS INVESTMENTS AND PEOPLE

WHILE THE PRIMARY MOTIVE IN OFFERING DATING IS TO INCREASE SALES AND RELATED PROFITS, AN IMPORTANT BENEFIT IS THE LEVELING OF PRODUCTION TO MAKE MAXIMUM USAGE OF THE PHYSICAL FACILITIES. THE SAME ANNUAL VOLUME CAN BE OBTAINED FROM LESS INVESTMENT IN PROPERTY, PLANT AND EQUIPMENT IF PRODUCTION IS RELATIVELY EVEN FROM MONTH-TO-MONTH RATHER THAN PRODUCING AT AN ACCELERATED PACE FOR A FEW MONTHS OF THE YEAR.

THE SAME BENEFIT TO PROPERTY, PLANT AND EQUIPMENT FROM LEVELING OF PRODUCTION IS ALSO RELATED TO THE FINANCIAL COSTS OF BUILDING INVENTORY AHEAD TO MEET PEAK SHIPPING PERIODS AND TRUST THAT THE DEMAND WILL STILL BE THERE AT THE SEASONAL PEAKS. HOWEVER, THE GREATEST BENEFIT OF MORE LEVEL PRODUCTION IS TO OUR PRODUCTION WORKERS. A STABILIZED WORK FORCE IS NOT ONLY MORE PROFITABLE, BUT IS EQUALLY MORE DESIRABLE FROM THE WORKERS' STANDPOINT.

EFFECT ON THE U.S. TREASURY

SINCE THE U. S. TREASURY ACTS AS A COLLECTION AGENCY, IT IS GRANTED THAT THEY WOULD BE DENIED USE OF THE FUNDS FOR THE PERIOD OF THE DEFERRAL. HOWEVER, IT WAS NEVER THE INTENT FOR THE CASH FLOW FROM VOLUNTARY, SELF-IMPOSED EXCISE TAXES ON THIS SMALL FISHING TACKLE INDUSTRY TO FUND THE TREASURY FOR ANY PERIOD OF TIME.

THE OTHER SIDE OF THE STORY IS THAT IF IT COSTS TREASURY AT TREASURY BILL RATES, THE FISHING TACKLE MANUFACTURERS ARE BORROWING AT LEAST AT 150% OF THOSE RATES (PROBABLY CLOSER TO 200% FOR MOST OF THE INDUSTRY).

INTEREST EXPENSE TO THE TREASURY WOULD BECOME INCOME TO THE FISHING TACKLE MANUFACTURERS BUT AT 150% OF THE AMOUNT IN QUESTION. THEREFORE, TREASURY SHOULD RECOGNIZE THE OFFSET OF ADDITIONAL INCOME TAXES COLLECTED ON A QUARTERLY BASIS FROM THE FISHING TACKLE MANUFACTURERS FROM INCREASED PROFITS AS A RESULT OF LESS INTEREST EXPENSE DUE TO LOWER BORROWINGS.

ANOTHER IMPORTANT POINT IS THE DEFLATIONARY EFFECT ON FISHING TACKLE ITEMS IF THIS BILL WERE PASSED. PRICES COULD BE MAINTAINED, WHEREAS THE PRESENT SYSTEM IS INFLATIONARY AND REQUIRES THE FISHING TACKLE MANUFACTURERS TO BORROW THE MONEY TO PAY THE TAX BEFORE COLLECTION FOR THE SALE IS MADE. THESE COSTS FIND THEIR WAY INTO THE SELLING PRICE OF THE PRODUCTS AND ARE MARKED UP THROUGHOUT THE DISTRIBUTION SYSTEM.

SUMMARY OF DEFERRAL PROVISION

THE METHOD OF SELLING AND THE SUBSEQUENT COLLECTION OF RECEIVABLES HAS CHANGED SINCE THE INDUSTRY VOLUNTARILY IMPOSED AN EXCISE TAX ON ITS PRODUCTS. THE TIMING FOR REMITTANCE OF THE TAX HAS EVEN BEEN INCREASED. THE PROVISIONS OF THE PROPOSED LEGISLATION WOULD ENABLE THE MANUFACTURER OR IMPORTER TO MORE CLOSELY MATCH THE PAYMENT OF THE TAX WITH THE COLLECTION FOR THE SALE WHICH WAS THE INTENT IN 1952. THEREFORE, THE PROPOSED LEGISLATION SHOULD NOT BE CONSIDERED SPECIAL INTEREST OR A PRECEDENT FOR ANY OTHER EXCISE TAX INTERESTS.

REMAINING PROVISIONS OF HR 2163

THE FOLLOWING POSITION PAPER WAS ADOPTED BY THE COMPANIES INDICATED ON MARCH 3, 1983:

CERTAIN FISHING TACKLE COMPANIES
POSITION PAPER
DINGELL-JOHNSON EXCISE TAX MATTERS

WE, THE UNDERSIGNED, ARE UNITED AND DEDICATED IN OUR BELIEF THAT THE REGENERATION AND ENHANCEMENT OF THE GENERAL FISH POPULATION AND THE RESULTING DEGREE OF SUCCESS IN CATCHING FISH IS THE MOST CRITICAL ISSUE FACING THE SPORT FISHING INDUSTRY, NOW AND DURING THE NEXT 25 YEARS. THEREFORE, WE ENTHUSIASTICALLY SUPPORT MEASURES WHICH WILL INCREASE THE REVENUE AVAILABLE TO THE DINGELL-JOHNSON PROGRAM.

OUR SUPPORT IS FOR THE MERCHANT MARINE AND FISHERIES COMMITTEE BILL (HR 1724) WHICH CONTAINS PROVISIONS FOR REALLOCATION OF MOTOR BOAT FUEL TAX, IMPORT DUTIES ON FISHING TACKLE, YACHTS AND PLEASURE CRAFT TO THE DINGELL-JOHNSON PROGRAM, EXTENDS THE EXCISE TAX TO TROLLING MOTORS AND ELECTRONIC FISH FINDERS AT A 3% RATE AND TO MOST OTHER FISHING TACKLE ITEMS AT THE CURRENT 10% RATE WITH THE EXCEPTION THAT THE RATE FOR TACKLE BOXES, REGARDLESS OF USE, BE ADJUSTED TO REFLECT 5% RATHER THAN 10%. THE BILL ALSO CONTAINS OUR LONG SOUGHT AFTER DEFERRAL FOR REMITTANCE OF THE EXCISE TAX.

CERTAIN FISHING TACKLE COMPANIES WERE AMONG THE FIRST PROPONENTS TO LOBBY IN FAVOR OF TAXING ITS PRODUCTS TO PROVIDE FUNDS NECESSARY TO MANAGE AND IMPROVE THE NATION'S SPORT FISHING RESOURCES. MOST OF THOSE COMPANIES HAVE NEVER CHANGED THAT POSITION. THE MECHANICS OF HOW ADDITIONAL FUNDING MIGHT BE OBTAINED AND EVEN THE WISE, JUDICIOUS USE OF EXISTING FUNDS, IS SUBJECT TO DEBATE. HOWEVER, THEY ARE ISSUES THAT CAN BE RESOLVED IN THE NORMAL LEGISLATIVE AND REGULATORY PROCESS. THE RECOMMENDED PROVISIONS CANNOT COMPLETELY SATISFY ALL THE PARTIES INVOLVED, BUT OUR INDUSTRY CAN NO LONGER WAIT FOR THE "PERFECT" SOLUTION WHILE THE PROBLEMS THAT CONFRONT US GROW TO UMANAGEABLE PROPORTIONS.

BASED ON AFTMA'S MOST RECENT EXECUTIVE MARKET SUMMARY AND INDUSTRY KNOWLEDGE OF UNIT MARKET SHARE, THE COMPANIES THAT SUPPORT THIS BILL REPRESENT APPROXIMATELY 70 TO 80 PERCENT OF ALL REELS SOLD AND 60 TO 70 PERCENT OF ALL RODS SOLD.

WE URGE ALL OTHER COMPANIES WHO UNDERSTAND THE NEEDS OF OUR INDUSTRY, AND THE REALITIES OF THE LEGISLATIVE PROCESS, TO LET THEIR VOICE BE KNOWN IN SUPPORT OF OUR POSITION. THEREAFTER, THE MEMBERSHIP MUST PUT ITS DIFFERENCES BEHIND US AND UNITE BEHIND RESPONSIVE, COHESIVE LEADERSHIP WHICH CAN DEVELOP MEANINGFUL PROGRAMS THAT WILL GROW THE INDUSTRY FOR THE BENEFIT OF ALL CONCERNED.

ABU/Garcia	Fairfield, New Jersey
Berkley	Spirit Lake, Iowa
Daiwa Corporation	Gardena, California
Johnson Fishing Companies	Mankato, Minnesota
Kodiak Corporation	Bessemer, Michigan
Martin Reel Company	Mohawk, New York
Ryobi American Corporation	Bensenville, Illinois
Shakespeare Fishing Tackle	Columbia, South Carolina
South Bend Sporting Goods, Inc.	Chicago, Illinois
Walker International	Detroit, Michigan
Zebco	Tulsa, Oklahoma

Mr. Chairman, we believe it is past time for the sport fishing industry to get its own house in order. Revenue provided under this bill and destined for fish restoration programs will change. The motorboat fuels tax could change at any time. Duty on fishing tackle is already being reduced in some categories by as much as 60% under the Tokyo round of multilateral trade negotiations. Those sport-fishing companies whose products are not taxed have benefited from the excise tax we have paid on reels, rods and lures for the past 31 years. Our own Association led by a few individuals who have only their self interest in mind are simply not thinking in terms of 15-20 years from now. If not us - who? If not now - when?

We urge the passage of HR 2163 with the exception that the effective date of the tax on additional fishing equipment be changed to August 1, 1984, which is the beginning of the tackle year. Prices are already in place for the 1983-84 season. An effective date of January 1, 1984 creates a difficult in season pricing problem. The size of the tax is too great for manufacturers and importers to absorb. This legislation will do more for the future of sportfishing in America than any other legislation ever considered by Congress.

SUMMARY OF PRINCIPAL POINTS
FROM
STATEMENT OF GENE HOWARD
VICE PRESIDENT, ZEBCO
BEFORE THE
SENATE FINANCE COMMITTEE
TAXATION AND DEBT MANAGEMENT SUBCOMMITTEE
IN SUPPORT OF
HR 2163
AUGUST 3, 1983

1. THE PRESENT EXCISE TAX IS VOLUNTARY ON THE PART OF THE SPORTFISHING INDUSTRY.
2. THE DINGELL-JOHNSON FUND IS A MAJOR FACTOR IN THE SUCCESS OF SPORTFISHING IN AMERICA.
3. ZEBCO AND THE MAJORITY OF REEL AND ROD COMPANIES HAVE ALWAYS SUPPORTED THE TAX.
4. THE TAX IS IMPORTANT TO THE DEVELOPMENT OF THE SPORTFISHING INDUSTRY.
5. THE CALENDARIZATION OF SALES BY THE INDUSTRY HAS CHANGED SINCE THE TAX WAS ENACTED AS A RESULT OF DATING PROGRAMS.
6 THE TIMING FOR REMITTANCE OF THE TAX HAS BEEN ACCELERATED.
7. DATING IS SOMETIMES MORE IMPORTANT THAN PRICE.
8. THE ACCEPTANCE OF SALES TERMS AFFECTS INVESTMENT AND PEOPLE.
9. THE EFFECT ON THE TREASURY IS MINIMAL.
10. THE PROVISIONS OF HR 2163 MORE CLOSELY MATCH THE REMITTANCE OF THE TAX WITH THE COLLECTION FOR THE SALE.
11. IT WAS NEVER INTENDED FOR THE REVENUE DEPOSITED FROM THIS SMALL SPORTFISHING INDUSTRY TO FUND THE UNITED STATES TREASURY FOR ANY AMOUNT OR PERIOD OF TIME.
12. THE FACT THAT THIS IS AN INDUSTRY-SPONSORED TAX MAKES IT UNIQUE AND THE PROPOSED LEGISLATION SHOULD NOT BE CONSIDERED SPECIAL INTEREST OR A PRECEDENT FOR ANY OTHER EXCISE TAX INTERESTS.
13. THE REEL AND ROD COMPANIES WHO SUPPORT HR 2163 REPRESENT APPROXIMATELY 70 TO 80 PERCENT OF ALL REELS SOLD AND 60 TO 70 PERCENT OF ALL RODS SOLD.
14. IT IS PAST TIME TO ELIMINATE THE FREE RIDE OF THOSE FISHING TACKLE COMPANIES WHOSE PRODUCTS ARE NOT TAXED AND YET HAVE BENEFITED FOR 31 YEARS FROM THE TAXES ON REELS, RODS AND LURES.

Senator PACKWOOD. Thank you.
Mr. Sciulla.

STATEMENT OF MICHAEL SCIULLA, DIRECTOR, GOVERNMENT AND PUBLIC AFFAIRS, BOAT/US, ALEXANDRIA, VA.

Mr. SCIULLA. Good morning, Mr. Chairman. My name is Michael Sciulla. I am government relations director of Boat Owners Association of the United States. I am appearing today on behalf of BOAT/US and as the representative of the recreational boating public to provide unqualified endorsement of H.R. 2163.

It is, indeed, a privilege, Mr, Chairman, to appear before this subcommittee, and you in particular. I know I do not have to go into the details of 2163, as many consider you the father of the Federal Boat Safety Act of 1980, upon which H.R. 2163 is based.

Let me simply say that the funds, the motorboat fuel tax funds that will be diverted to the States under 2163 will be used to enhance boating education, law enforcement, on the water assistance, and providing safe access for the 15 million boatowners in this country. And it certainly would have been a significant impact, for example, on the State of Oregon, where one in every 19 individuals in that State is a boatowner.

Additionally, Mr. Chairman, you should be aware that 2163 has a new provision. It would send $15 million to the Coast Guard annually to compensate that agency for the services it provides the recreational boating public.

Mr. Chairman, Congress has expressed its support for the basic provisions of 2163 on numerous occasions over the past years, And just in the last week or so, Mr. Chairman, I am sure you are aware that the Appropriations Committee has approved a $12.5 million appropriation from the boating safety trust fund for fiscal 1983, an additional 12.5 million for fiscal 1984. H.R. 2163 has the strong support of a broad-based coalition of boating, sportfishing, and conservation interests.

Mr. Chairman, approval of 2163 is essential this year because the basic authority to make expenditures from the existing boating safety trust fund will expire in early 1984.

The administration, in our view, is playing a shell game with the fuel taxes paid by the boatowners of this country. They should either allow the funds to be spent, as directed by Congress, or they ought to eliminate the tax entirely, or go back to the tax credit that was in existence during the 1970's.

Mr. Chairman, I urge this committee's approval of H.R. 2163, without substantial amendment.

Thank you.

[The prepared statement of Michael Sciulla follows:]

Statement of

MICHAEL SCIULLA, GOVERNMENT RELATIONS DIRECTOR

BOAT OWNERS ASSOCIATION of THE UNITED STATES
BOAT/U.S.

Washington National Headquarters
880 So. Pickett Street, Alexandria, Virginia

Before the

Subcommittee on Taxation and Debt Management

of the

FINANCE COMMITTEE
U.S. SENATE

Re: H.R. 2163, To Amend the Dingell-Johnson Act

August 3, 1983

Mr. Chairman and Members of the Subcommittee:

I am Michael Sciulla, Government Relations Director of Boat Owners Association of The United States (BOAT/U.S.). We very much appreciate the opportunity to appear before this distinguished panel. For those of you unfamiliar with our Association, BOAT/U.S., with 125,000 members from all 50 states, is the largest national organization of individual boat owners in the country. I am here today as the representative of the recreational boating community to testify in strong support of H.R. 2163.

Mr. Chairman, the legislation before you is very straightforward. H.R. 2163 is designed to put to work the federal excise taxes on marine fuel paid by boaters and sportfishermen. Some 60 million Americans who enjoy recreational boating and sportfishing will benefit from this legislation.

The bill before you is very much similiar in concept to the Highway Revenue Act of 1956 and the Airport and Airway Revenue Act of 1970 in that Congress has mandated that specialized taxes paid by specific users should be used to improve each particular mode of transportation. Under the formula established by H.R. 2163, the taxes on fuel used by motorboats - and not general Treasury funds - will be used to support state programs dedicated to improving boating safety and enhancing sportfishing.

Currently, under the existing nine cents per gallon tax on fuel, the federal government is collecting an estimated $85 million annually in taxes attributable to recreational motorboating. It is time, Mr. Chairman, that the government stop the shell game it has been playing with these taxes and either put the money to good use or eliminate the tax entirely.

We would prefer, however, that the taxes collected be put to good use: by helping in the fight to save lives on the water and by improving the quality of recreational boating and sportfishing.

Under H.R. 2163, the states can choose to focus on safety and law enforcement, as many have done during the past decade in which the boating fatality rate was cut in half. They can also focus on providing safe public access to thousands of miles of this nation's shoreline which are either inaccessible because of a lack of public or private facilities, or overly congested and unsafe because launching ramps, moorage or harbors of safe refuge are so few and far between.

One of the principal attributes of this legislation is that it gives the states - those closest to the problem and not some overly burdened federal agency - the option to choose between education, law enforcement, on-the-water assistance or providing safe access. This is the proper and most effective approach the federal government can take.

This legislation also goes a step farther. It will directly aid the financially hard-pressed Coast Guard by providing that agency with $15 million per year from boating's own taxes. This will help compensate the USCG for a number of important boating programs which can only be performed by the federal government.

Mr. Chairman, H.R. 2163 is the product of nearly a decade of Congressional discussion. And, while it can trace its roots as far back as the Dingell-Johnson Act of 1950 and the Federal Boating Safety Act of 1971, Congress has, much more recently, expressed its approval of the bill's newer provisions.

In 1980, Congress was responsible for P.L. 96-451, the basic legislation establishing a $20 million boating safety trust fund to collect boating's marine fuel taxes. And, just last December in late 1982, the trust fund's cap was increased to $45 million to reflect the new nickle excise tax on fuel.

Support for this measure continues to grow. Just this past month, Congress approved a $25 million appropriation from the fund for boating safety for fiscal years 1983 and 1984. Most recently, H.R. 2163 was approved by the full House of Representatives without any dissent.

Clearly, Mr. Chairman, H.R. 2163 has the broad support of both your colleagues as well as a wide range of organizations representing the boating and sportfishing public. To date, I am unaware of any boating organization opposed to this measure. In fact, I have heard of nothing but unanimous support for it.

Time, however, is now of the essence. Unless legislation is enacted in this session of Congress, the basic authority to make expenditures from the trust fund will expire early next year. H.R. 2163 extends this authority until March 31, 1989.

On behalf of our 125,000 members, Mr. Chairman, I applaud you for your willingness to schedule a timely hearing on this bill and your interest in fostering an equitable solution to this decade-long problem. I urge you and the members of this subcommittee to approve H.R. 2163, without substantial amendment, as soon as possible.

Senator **Packwood**. Thank you.

Mr. **Rosen**. Thank you, Mr. Chairman.

STATEMENT OF DR. RUDOLPH A. ROSEN, FISHERIES RESOURCE SPECIALIST, NATIONAL WILDLIFE FEDERATION, WASHINGTON, D.C.

I am Dr. Rudolph Rosen, fisheries specialist for the National Wildlife Federation. Thank you for this opportunity today to express strong support for H.R. 2163. Today I am speaking on behalf of the National Wildlife Federation and the National Audubon Society.

H.R. 2163 would provide over $100 million in user fees directly paid by anglers and boaters for State sportfisheries management, recreational boating safety, and water access acquisition and development. And we support this user pays approach to funding State fishing and boating programs. Anglers have paid excise tax on some fishing tackle for over 30 years through the Interior Department's Dingell-Johnson [D–J] program. Unfortunately, D–J receipts just have not kept pace with increased pressure on fishery resources. H.R. 2163 would correct this problem by broadening the base of aquatic resources who contribute and by expanding the fishing tackle tax base.

Expansion of the excise tax to cover additional tackle, as proposed by H.R. 2163, is the result of a compromise strongly supported by the Nation's anglers groups, conservation organizations State fisheries agencies, fisheries professionals, and the bulk of the tackle industry by volume.

We and our other coalition members would have preferred that the present compromise include electronic fishfinders, which are widely acknowledged, especially by the product makers, to have placed increased pressure on U.S. fisheries. Nevertheless, we do support the compromise, but are encouraged by this committee's discussion on the equability of the tax base that we have heard today.

Recreational boaters and boating anglers have received comparatively little benefit from the 9 cents per gallon user fee they already pay on motorboat fuel. H.R. 2163 would correct this problem by providing up to $45 million of the motorboat fuel user fee to a boating safety account which could be appropriated to the States and Coast Guard for education and law enforcement, public access, and other recreational boating programs. H.R. 2163 also would add motorboat fuel user fee receipts to a sportfish restoration account. Other moneys would go into the account from the present D–J program, expanding present D–J excise taxes to include additional tackle items and electric trolling motors, and from annual import duties on fishing tackle, yachts and pleasure crafts.

The sportfishing program is worthy of this expanded funding. With over three decades of D–J moneys, fisheries resource managers have succeeded in bringing fish and anglers together, creating a phenomenon of fishing in America. Improved access and new and better managed waters have attracted new anglers. An increased use of rapidly evolving fishing technology has provided anglers a greater likelihood of success than ever before. These trends, in addition to inflation, and reduced funding in many State and Federal programs have simply overwhelmed many fishery management agencies.

But, even with its inadequate funding base, D–J presently is helping State agencies continue vital programs as can be seen in the examples provided in our written testimony.

The result of thousands of D–J-sponsored efforts nationwide is that 54 million anglers are presently in the United States and American anglers spend over $17 billion each year on fishing.

When anglers purchase domestic and foreign produced tackle, they help expand the U.S. market for tackle, boats, trailers, motors and other fishing accessories through the user pays excise tax. Equally important to America is the effect that increased fishing opportunity has on employment. Increased fishing can create jobs, but new jobs will not just be found in the shops of tackle and boat and motor makers. Increased fishing also means jobs in restaurants, gas stations, souvenir shops, hardware stores, and clothing shops. The list goes on. The $17 billion anglers spend to go fishing supports a wide diversity of employment. Of all outdoor recreation in the United States, fishing ranks third in popularity. Nationwide spending on leisure activities accounted for 1 in every 15 jobs in 1981. The number of jobs in the United States directly supported by anglers is unknown. But, considering how much money Americans spend to go fishing, my guess is that many U.S. citizens are employed because our country maintains a viable sportfishery and I believe that our country has a viable sportfishery because of D–J.

Thank you for the opportunity to speak today, Mr. Chairman.

[The prepared statement of Dr. Rudolph A. Rosen follows:]

NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036 202—797-6800

August 3, 1983

STATEMENT OF DR. RUDOLPH A. ROSEN OF THE NATIONAL WILDLIFE FEDERATION ON H.R. 2163, TO AMEND THE FEDERAL BOAT SAFETY ACT OF 1971, AND FOR OTHER PURPOSES, BEFORE THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT OF THE SENATE COMMITTEE ON FINANCE [1]

Mr. Chairman, I am Dr. Rudolph A. Rosen, Fisheries Resource Specialist for the National Wildlife Federation. I welcome this opportunity to epxress strong support for H.R. 2163, legislation that will enhance the quality of sport fishing for America's 54 million anglers and recreational boating for our 60 million boaters.

The NWF is the world's largest conservation-education organization. We have over 4 million members and supporters throughout the U.S. and 51 affiliated state-wide and territorial organizations. Many of our members are avid anglers and boaters. All are dedicated to the wise use of our nation's waters and fisheries resources.

H.R. 2163 would provide over $100 million in "user fees," directly paid by anglers and boaters, for state sport fisheries management, recreational boating safety, and water access acquisition and development. The bill would establish a new Aquatic Resources Trust Fund to be administered by the Secretary of the Treasury. The Trust fund would expand and combine present sport fish restoration and boating safety programs and consist of two accounts, a Sport Fish Restoration Account and a Boating Safety Account. Revenues for the new Trust Fund would come from expanded excise taxes on sport fishing

---

[1] This statement is also supported by the National Audubon Society.

100% reclaimed paper

tackle, the 9¢ per gallon excise tax on motorboat fuels, and import duties on fishing tackle, yachts, and pleasure craft. We support this user-pays approach to funding state fishing and boating programs.

Anglers have paid a 10 percent excise tax on certain fishing tackle items for over 30 years through the Interior Department's Dingell-Johnson (D-J) Federal Aid in Sport Fish Restoration Program. NWF's support for this user fee dates back to the late 1930s and early 1940s when the D-J program was first proposed. Over $400 million has been collected by D-J and used to support state fisheries management. Unfortunately, receipts from the excise tax have failed to keep pace with increased pressure on fisheries resources. H.R. 2163 would correct this problem by broadening the base of aquatic resource users who contribute to the D-J program and expanding the fishing tackle tax base to include additional tackle.

Expansion of the excise tax to cover additional tackle items as proposed by H.R. 2163 is the result of a compromise strongly supported by the nation's angler groups, conservation organizations, state fisheries agencies, fisheries professional societies, and the bulk of the tackle industry by volume. We and our other coalition members would have preferred that the present compromise include electronic fish finders, which are widely acknowledged to have placed increased pressure on U.S. fisheries. Nevertheless, we believe it is now in the best interest of the legislation, this nation's sport fisheries, and all affected parties to support the compromise as it presently exists in H.R. 2163. We intend to stand by the compromise.

Recreational boaters (including anglers who use power boats) have received comparatively little benefit from the 9¢ per gallon user fee they already pay on motor boat fuels. Of the $45 million in motorboat fuels tax receipts now authorized annually for recreational boating safety and boating access improvement, only $5 million has been appropriated since 1980. Because of the failure to return user fees, boaters have not benefited from enhanced safety and expanded water access for trailerable boats as Congress intended.

According to the Outdoor Recreation Policy Review Group, federal, state, and local governments are not meeting the growing demand for outdoor recreation. Nationwide, state administrators identified a critical need for 6,395 additional boating access sites, according to a 1979 American Fisheries Society survey. The lack of adequate access creates boater safety problems by concentrating boaters on small lakes or parts of large lakes when access sites do exist. Improved boater education and law enforcement programs also are needed to meet the increasing pressure on our waterways. For example, despite a decrease in the boater fatality rate since the early 1970s (8.3 fatalities reported per 100,000 boats in 1981), the number of yearly deaths remains relatively constant because of the increasing number of boaters.

The states are hard-pressed to meet the need for recreational boating safety. Many states' programs have been reduced sharply due to inadequate funding. Moreover, states increasingly are being asked to oversee boater safety on waters under federal jurisdiction as well as on their own state waters.

Under H.R. 2163, up to $45 million of the motorboat fuels user fee would go into the Boating Safety Account and could be appropriated to the states ($30 million) and Coast Guard ($15 million) for education, law enforcement, public access, and other assistance programs to improve recreational boating safety. Additionally, at least 10 percent of the total revenues in the Sport Fish Restoration Account, over those revenues that would have accrued under the old D-J program, would have to be used for access site acquisition and development for boaters.

H.R. 2163 would add the remainder of the motorboat fuels user fee (about $21 million) and any amount not appropriated for boat safety programs to the Sport Fish Restoration Account (except $1 million which would go to the Land and Water Conservation Fund). Other monies would come from the present D-J program (about $32 million), expanding the present 10 percent excise tax on certain sport fishing equipment to include additional tackle items and placing a 3 percent excise tax on electric trolling motors ($12 million), and annual import duties on fishing tackle, yachts, and pleasure craft ($20 million).

The sport fishing program is worthy of this expanded funding. With over three decades of D-J monies, fisheries resource management has blossomed and state agencies have succeeded in bringing fish and anglers together, creating a phenomenon of fishing in America.

But while the D-J program has been instrumental in the success of America's fisheries programs, it also has expanded the job of fisheries managers. Improved public access and new and better-managed waters have attracted new anglers. Increased use of rapidly evolving "fishing technology" has provided anglers a greater likelihood of success than ever before. These trends, in addition to inflation and reduced funding in many state and federal programs, have simply overwhelmed many fishery management agencies.

State agencies have reported an urgent need for more than $160 million, according to a survey just completed by the American Fisheries Society. Most people involved with funding fisheries programs as well as many leaders in angler support industries agree that the best way to increase fisheries funding is by expanding the present D-J program--by passing H.R. 2163.

Even with its inadequate funding base, D-J presently is helping state agencies continue vital programs (up to 75% of a project's cost may be funded with D-J receipts) as shown by the following examples:

Oregon. Oregon's 1983 D-J apportionment of $812,484 is helping to fund 9 projects this year. Present projects include work on salmon and steelhead to improve survival and passage technology, determine harvest rates, increase angling opportunity, determine the effect of stocking practices on wild stocks, and monitor populations on the Deschutes, Rogue, Umpaqua, and Tule Rivers. Other projects include work on cutthroat trout, sturgeon, American shad, bass, bluegill, and catfish. Overall, D-J funds have been used to acquire 59 fishing and boating access sites and have provided for fish habitat improvement, screening of diversion ditches, and fish passage devices.

Louisiana. This year's apportionment to Louisiana of $503,860 is partially funding 27 projects on fish such as largemouth bass, crappie, bluegill, channel catfish, black bullhead, buffalo, striped bass, redfish, and spotted seatrout. Work on the effects of water quality on fish, status of coastal species, and the effects of fish diseases highlight current projects.

Missouri. Missouri's 1983 apportionment of $810,300 is being used on 24 projects, such as improving bass fishing on Table Rock Lake, developing a management plan for paddlefish, evaluating trout fishing regulations, developing a statewide stream management plan and angler survey, evaluating the effects of fish diseases and parasites, and many others. Since the D-J program began, Missouri has developed 36 public access areas, established several fisheries, and constructed 5 fishing lakes with D-J funds.

Rhode Island. Six projects are being conducted in Rhode Island this year with some funding provided by the 1983 apportionment of $327,800. Most of the present work involves restoration or stocking of Atlantic salmon, alewife, American shad, and trout.

Wyoming. Wyoming's 1983 apportionment of $524,484 is helping to fund 14 projects primarily on 5 species of trout. Most of Wyoming's work centers on improving trout stocking and management techniques in rivers and reservoirs. Some work to develop the walleye fishery is also being conducted.

Colorado. The $843,469 apportioned to Colorado for 1983 is helping to fund 35 projects on a wide range of fish species throughout the state. Of particular significance are studies on trout susceptibility to toxic metals, water quality and pollution effects on fish, northern pike life history, kokanee salmon rearing, establishment of forage fish in reservoirs, and development of a fisheries data bank.

Hawaii. Hawaii's 1983 D-J share of $327,800 is being used to study the recreational potential of mullett and to conduct fish survey and population work on largemouth bass, tilapia, and channel catfish.

Texas. Texas' 1983 apportionment of $1,639,000 is helping fund 30 projects on fish such as largemouth bass, striped bass, hybrids of striped bass and white bass, hybrids of smallmouth bass and Florida bass, bluegill, hybrid sunfish, flathead catfish, red drum, blueback herring, and flounder. A wide diversity of fresh- and saltwater projects are being conducted: relative abundance of recreationally important saltwater fish, establishment of forage species for predatory fish, development of new hatchery techniques, and others.

> Montana. This spring, 29 projects are being funded in part by Montana's 1983 apportionment of $745,460. Projects include acquisition of harvest and movement data on paddlefish, general fisheries surveys on a large number of rivers and reservoirs, kokanee salmon spawning characteristics, evaluation of development projects affecting streams, effects of reservoir discharge temperature on trout growth, and investigation of minimum stream flow requirements of fish.

The result of these and thousands of other D-J sponsored efforts nationwide is that 54 million Americans go fishing. And, according to the 1980 National Survey of Fishing and Hunting, each angler spends about $20 per day of fishing. Overall, American anglers spent about $17 billion to go fishing in 1980.

When anglers purchase domestic- and foreign-produced tackle they help, through the user pays excise tax, to expand the U.S. market for tackle, boats, trailers, motors, and other fishing accessories.

Extending the present tax to additional items of tackle and providing additional new monies to fisheries programs from import duties and the motorboat fuels user fee will further enhance the fishery and increase this market. But equally important to America is the effect that increased fishing opportunity (and angler participation) has on employment.

Increased fishing can create jobs. But new jobs will not be found just in the shops of tackle and boat/motor manufacturers, distributors, or retailers. Increased fishing also means jobs in restaurants, gas stations, souvenir shops, hardware stores, clothing shops, motels, grocery stores, accounting firms, campgrounds, department stores, convenience shops, etc.; the list goes on ad infinitum. The $17 billion that anglers spent to go fishing in 1980 moved down through our entire economy and supported a wide diversity of employment.

The effect of fisheries management on jobs directly associated with fishing was detailed in a study conducted by economists at the University of Maryland on the striped bass fishery in the Northeast. In 1980, anglers made 2.17 million fishing trips for striped bass. The fishery (recreational and commercial) was estimated to have provided 5,421 jobs. The study evaluated a proposal to raise the size limit of striped bass from 12 to 14 inches. It was found that a 2-inch increase in size limit would increase total employment by 168 jobs.

Moreover, that estimated employment increase did not include jobs created in industries other than those directly associated with the striped bass fishery or potential benefits to employment if production of striped bass were to increase due to better management. My point is that jobs are affected by how a fishery is managed.

In instances where fisheries managers have started new fisheries such as occurred when striped bass were introduced in waters off the coast of Oregon and California, the resulting increased fishing opportunity has led to a rapid realization that good fishing creates a demand for services, and that means jobs. In Oregon alone, $308 million was spent by anglers who enjoyed 14 million days of fishing in 1980. Anglers over 16 years of age make up 34% of Oregon's population while 40% of residents aged 6 to 15 go fishing. In Louisiana, anglers spent $369 million and tallied over 20 million fishing days in 1980. Much of Oregon's and Louisiana's angling opportunity comes as a direct and indirect result of D-J funded fisheries research and management programs, which in turn expands sales opportunity for local merchants as well as fishing for anglers.

But sales of sport fishing equipment and supplies to anglers constitute only a proportion of most angler-related industry or retail businesses. The 1980 Hunting and Fishing Survey estimated that anglers spent $162 million on camping equipment, $19 million on binoculars, $3 million on snowshoes and skis, $64 million on special clothing, $48 million on rubber boots and waders, $127 million to repair fishing-related equipment, $18 million on taxidermists' fees, and $156 million on anglers' magazines. In addition, anglers spent over $3 billion on food and $665 million on lodging while on fishing trips. Transportation costs alone totaled $3 billion. These enormous sums of money went to support industries and jobs that are related to fishing, although they are not usually thought to be.

Of all outdoor recreational activities in the U.S., fishing ranks third in popularity, exceeded only by swimming and bicycling. Nationwide, spending on leisure activities was $244 billion in 1981, accounting for 1 in every 15 jobs in America (Outdoor Recreation Policy Review Group Report, 1983).

The number of jobs in the U.S. directly supported by anglers is unknown. But considering how much money Americans spend to go fishing each year, my guess is that many U.S. citizens were employed in 1980 because our country maintains a viable sport fishery. And I believe our country has a viable sport fishery in large part because of the D-J program. H.R. 2163 will help to provide for the future of fisheries management in America, for the future of America's recreation-related economy, and for the future of the American angler.

Senator PACKWOOD. Doctor, thank you. Needless to say, I agree with everything you have all said. Mr. Sciulla especially would be familiar with my background in the boating and safety recreation fund, and the frustration I have had in trying to get the money spent. And this is not a criticism of this administration. All administrations, if they can, like to avoid spending trust funds of a variety of kinds, and all that does is break faith with the public, and it hurts the credibility of government. We promise people, I do not care if it is airline passengers, we have raised the airline ticket tax to 8 percent, from 3 percent last year, or highway users or boat users, if we promise them that we are going to spend money taken from them for a specific purpose, it does no good to this Government's credibility not to spend it. It is even worse if you try to spend it on something else. But most of these taxes would not get passed but for the support of the users upon whom they are going to be levied. And they clearly would fight them, and we clearly would probably not pass them but for their support. And then to break faith and not spend the money does not help us when we come back again and ask for it. So I appreciate very much—in fact, I am surprised still to find the good support when in many areas I think we have broken faith and not spent the money. And I can assure you, one, I think the bill is a good bill and, two, I will do everything I can to make sure that the money is spent for the purposes for which the tax is levied.

I have no questions, but I very much appreciate your testimony. Sparky.

Senator **Matsunaga**. Thank you very much, Mr. Chairman. I, too, join in commending you, members of the panel, for your wonderful testimony. I have one question relative to boating. We have a problem in Hawaii. Whenever there is a heavy rain; the sand washes out to the mouth of the river and blocks the mouth to the extent that fishing boats are unable to pass through freely. Could the funds which would be provided under this bill, be used for dredging the mouth of the river?

Mr. **Sciulla**. For dredging, Senator?

Senator **Matsunaga**. Yes.

Mr. **Sciulla**. I am advised yes, Senator.

Senator **Matsunaga**. It would?

Mr. **Sciulla**. Yes.

Senator **Matsunaga**. So you have no objections, any of you, for the use of those funds for that purpose?

Mr. **Sciulla**. No; I do not, Senator.

Senator **Matsunaga**. You do not. So is it left up to the State after the allocation is made as to how the funds are used?

Mr. **Sciulla**. Yes; this legislation gives the States the option as to where to spend their funds.

Senator **Matsunaga**. Thank you very much.

Mr. **Sciulla**. Thank you.

Senator **Packwood**. Gentlemen, thank you very much.

On the subject of fishing and boating, we will conclude with a panel of Richard Woolworth, chairman and chief executive officer, Woodstream Corp., Thomas Schedler, the executive vice president of the American Fishing Tackle Manufacturers Association, and Norville Prosser, the executive secretary of the Sport Fishing Institute.

Please go ahead, Mr. Woolworth.

STATEMENT OF RICHARD G. WOOLWORTH, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, WOODSTREAM CORP., LITITZ, PA.

Mr. **Woolworth**. Thank you, sir.

Mr. Chairman——

Senator **Packwood**. Let me say again to you and the others, your statements in their entirety will be in the record.

Mr. **Woolworth**. My name is Richard Woolworth and I am chief executive officer of Woodstream Corp., a $45 million company, which is listed on the American Stock Exchange.

Senator **Matsunaga**. Could you draw the mike closer to you and speak directly into it.

Mr. **Woolworth**. Our company has been in the hardware and sporting good business for over 100 years. Shortly after World War II, we went into the tackle box business, which has been the subject of discussion this morning because of the expansion of the kinds of articles subject to tax under the Dingell-Johnson bill. In 1978, we started increasing our stake in the fishing tackle industry by buying Fenwick Fishing Rod Co. in Orange County, Calif.

The problem that we see with the present law is the way in which it has been administered since 1952. We feel that such administration has had an adverse effect on the fishing tackle manufacturers, particularly the domestic industry.

Also, we have a very serious problem in the fact that there is being proposed an expansion of the 10-percent tax to cover tackle boxes.

The administration of the tax is the place where we have a great deal of problem. The purpose of this tax, which originated in 1952, Woodstream wholeheartedly supports. But the administration of the tax has created an unusual situation whereby we, the manufacturer, pay a tax on the selling price, and the importer is put in the position where he is able to pay the tax at the boat. The net effect is that we pay a percentage up to twice the percentage our competitors are paying.

Senator PACKWOOD. Excuse me. Explain to me why it is twice the percentage.

Mr. WOOLWORTH. What has happened in the past is the Japanese companies generally, and to a certain extent the Europeans, have moved their manufacturing to Korea and Taiwan because of the lower cost of labor. And at that point they have been shipping the rods, which is what we are vitally involved with, to the United States, and the first sale is made at the boat. That is the first taxable sale of 10 percent which is paid on the cost of the rods, the labor, the material, and overhead from those plants in Korea. And the 10-percent tax is paid at that time.

In many cases this "sale" could be to a company that they have been in partnership with or have investments in, possibly from a Japanese trading company and so forth.

Senator PACKWOOD. You mean when it comes into one of these trading companies, and it really is not the point of first sale. All they are is a middleman that is going to pass it on to the actual point of first sale.

Mr. WOOLWORTH. Yes, sir, but——

Senator PACKWOOD. Whatever additional costs come for selling it are going to come after the 10 percent is paid.

Mr. WOOLWORTH. What happens is then they sell it back to themselves in a U.S.A. trading company. We, as a manufacturer, cannot sell from our factory up to our selling force, so we are paying a 10-percent tax at the end, which includes general selling, administrative, and profit. But the importer, unfortunately, is in a position that he can pay his tax earlier and then put his overheads and his profit on later.

Now, there is probably some who would say, "So what?" In 1952, when the tax bill was written, there was virtually no imports at that time. And from then up to 1976, importation increased to about 20 percent. From 1976 to 1981, importation increased—and I am talking of fishing rods went from 20-percent imports to 80-percent imports. And from 1981 to 1982, imports jumped, according to U.S. Commerce statistics, from 7,700,000 to over 10,900,000 rods. This means that U.S. manufacturers of fishing rods are presently left with about 10 percent of the total market in the United States.

I would like to extend my comments. I know Congress knows how to spend this money and spend it wisely—but I am not sure that the Senate completely understands, or the House, the effect that this has had on American jobs. What I am really saying, sir, is that 90 percent of all the fishing rod jobs in the United States have gone to the Orient and it has been done to a great extent as a result of the administration of this Dingell-Johnson bill, where the importer has had a 50-percent rate advantage and the U.S. manufacturer has really been paying the bill. What has really happened is that the American laborer has been put on relief. I guess he will have more time to go fishing and use Japanese fishing rods.

I also address the issue of tackle boxes in my statement, sir. This same thing could occur to that segment of the industry. A company in Mexico could get first sale and get better treatment than American manufacturers.

We are protected right now because the duty and the freight combined is greater than the labor, but if Mexico started up, we could get hurt badly with this tax of 10 percent. Tool boxes across the aisle in a retail store would be exempt. They would not pay the tax. In many cases, a clear lure box, or many like fishing boxes, on the counter are used as tool boxes and tackle boxes. Thus we could be prejudiced by tool box manufacturers. And, finally, I know my time is out, but you have heard multi-use products considered this morning. And I just appeal to this Committee that it takes some time. It is very easy, sir, to raise money, and it is very easy to spend it. But I hope that the Senate will carefully look on how the money is taken from the manufacturer so that we do not take any more American jobs away. And if 90 percent of the steel business or the automotive business went to the Orient or to Europe, there would be revolutions in the streets of Washington, Detroit, and Pittsburgh. And this has only happened in the last 7 years. It is not that it has gradually happened since 1952. The major portion of this swing is a result of the way the Dingell-Johnson Bill has been administered.

We support the bill, but the administration of it, I have a problem.

[The prepared statement of Richard G. Woolworth follows:]

STATEMENT OF
RICHARD G. WOOLWORTH
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
WOODSTREAM CORPORATION

Mr. Chairman and Distinguished Members of the Subcommittee.

My name is Richard G. Woolworth and I am Chairman and Chief Executive Officer of the Woodstream Corporation. On behalf of my company, I appreciate this opportunity to appear today to offer our comments on H.R. 2163, legislation amending the Federal Boat Safety Act of 1971.

Woodstream Corporation, a $45 million American Stock Exchange listed company, has played a substantial role in the American sports equipment industry for more than 100 years. Since shortly after World War II, it has been manufacturing fishing tackle boxes and fishing accessories at its facilities in Lititz, Pennsylvania. In 1978, its stake in the American fishing industry increased with its acquisition of the Fenwick fishing rod company with facilities in Orange County, California, and Bainbridge Island, Washington. Today, at these facilities, Woodstream employs more than 800 American workers.

Mr. Chairman, I am here today to express my deep concerns over two aspects of the legislation before you:

(1) the failure of this legislation to adequately address the adverse impact which

the administration of the manufacturer's excise tax on certain fishing equipment has had on the domestic fishing tackle industry; and

(2) the expansion of the 10 percent manufacturer's excise tax in H.R. 2163 to include fishing tackle boxes.

ADMINISTRATION OF THE TAX

In 1950, Congress enacted the so-called Dingell-Johnson Bill which imposed an excise tax on fishing rods, reels, artificial lures and baits, and creels. The purpose of this tax, which Woodstream wholeheartedly supports, is to provide funds to manage and improve the nation's sport fishing resources. For the administrative convenience of the Internal Revenue Service, that excise tax is levied on the "selling price" at the manufacturer, producer, or importer level, rather than at the retail level. At the time the Dingell-Johnson Bill was originally enacted, there was only a minimal amount of importation of fishing tackle products, so that the collection by the Internal Revenue Service was clear and fair under the law.

Today, however, that is not the case. The fishing tackle industry is no longer primarily an American industry. From the early 1950's until 1976, foreign-made tubular fishing rods*/ occupied only 20 percent of the American market. From the five-year period of 1976 to 1981, however, the statistics reversed themselves so that foreign-made fishing rods constituted 80 percent of the market share and American rods only 20 percent. From 1981 to 1982, imported rods increased from 7,748,000 to 10,993,000. With this dramatic shift came the loss of some 20,000 U.S. jobs.

---

*/ Tubular fishing rods account for approximately 90 percent of all dollar sales of fishing rods.

Although lower labor costs in foreign countries, particularly in the far east, had a major effect on this dramatic change in the market, it was, however, greatly accelerated by the efforts of some manufacturers to substantially reduce their liability for the 10 percent excise tax through early payment of the tax by a U.S. importing company set up for that purpose. The excise tax is paid at that time and, in turn, the product is sold to the foreign manufacturer's American subsidiary. In many cases, the importer-broker is a trading partner or part owner of the foreign fishing tackle company. This, in effect, would be considered a "first sale." Needless to say, however, this "first sale" does not include the normal costs of general selling and administration, nor does it include the gross profit. In fact, levying the tax on the "price" of the foreign manufactured goods at this early stage is roughly equivalent to levying the tax on the "price" of the goods at the factory level in the case of a U.S. manufacturer. According to standard corporate accounting, the general selling and administration costs and profit amount would increase the "price" of imported goods at port of entry by approximately 75 percent. The following simple example dramatically illustrates the effect of such transfers being deemed the "first sale" on the amount of excise tax paid:

Foreign Manufacturer			U.S. Manufacturer		
Manufacturer's cost at port of entry of graphite rod made in Korea		$7.00	Manufacturer's cost at factory		$17.00
Freight (6%)		.42	General selling and administrative costs		12.79
Broker fees, handling insurance (2%)		.14			
Duty (12.1%)		.91			
TOTAL		$8.47			$29.79
Excise Tax	$ .85			$ 2.98	
General selling and administrative costs		6.35			
TOTAL		$14.82			
Excise Tax (if include appropriate costs)	$1.48				

Mr. Chairman, in the Ways and Means Committee Report accompanying H.R. 2163, the Ways and Means Committee alluded to this problem, but, in our opinion, failed to resolve it. In the report, the Committee states:

> "The Committee understands that the fact that the Excise Tax on sport fishing equipment is imposed on the first sale of such equipment

> by a manufacturer or importer may result in different tax burden depending on whether a wholesale distributor, independent of the manufacturer or importer, is the purchaser when the taxable sale occurs. The Committee intends that the impact of the tax be the same in all cases. To ensure that this result obtains, the Committee wishes to stress the provisions of present law relating to the definition of price (Code Sec. 4216), especially the provision relating to establishment by the Internal Revenue Service of a constructive sale price in certain cases where a sale is not made at arm's-length (Sec. 4216(b)). The Committee intends that the Internal Revenue Service actively utilize this provision to ensure that the incidence of the Excise Tax on fishing equipment be equivalent for all manufacturers and importers, regardless of their form of business organization."

While we appreciate the fact that the Ways and Means Committee is aware of our situation, we do not believe that existing law can or will resolve the problem. A small group of fishing tackle manufacturers held a conference with the Internal Revenue Service on this subject back in 1981. The Service stated at that time that they were unable to carry out the purpose of the law without a more precise legislative definition on how the first sale was to be taxed. Our frustration was magnified by the fact that they suggested that the group of American manufacturers pass on to them by letter any violators of whom we were aware. Needless to say, this vigilante approach to enforcement of the law should not be acceptable.

It is Woodstream's belief that Congress must address the inequities found in the administration of the manufacturer's excise tax on fishing tackle products. Failure to do so will ensure that the American segment of the fishing tackle industry collapses. We realize that this is not an easy problem to solve nor do we have any magical solution. However, we would like to propose that the Committee consider amending the statute so as to trigger the taxable sale further "upstream." For example, the 10 percent excise tax could be levied on the U.S. manufacturer's factory cost. In the previously discussed example, the U.S. manufacturer's factory cost equalled approximately $17.00. With a 10 percent excise tax imposed on this price, the U.S. manufacturer would pay $1.70, as compared to $2.98 under the current interpretation of the law. This figure is still significantly higher than the $ .85 figure paid on the foreign goods.

As we indicated earlier, this is not the only means of handling this problem nor may it be the best. We would like the opportunity to work with members of the Committee and their staff in an effort to explore other possible options.

EXPANSION OF EXCISE TAX ON FISHING EQUIPMENT

H.R. 2163, as passed by the House of Representatives, would expand the articles subject to the 10 percent excise tax to include, among other items, fishing tackle boxes. While we can appreciate why a number of the other newly covered articles were made subject to the tax, we do not believe tackle boxes should be included due to the multiple use of such boxes outside of the sport fishing industry and due to the use of other types of boxes, which would not be subject to the excise tax, as fishing tackle boxes. For example, a tool box manufacturer would not be subject to the excise tax under H.R. 2163 even though their products are difficult to differentiate from the tackle box manufacturer's product. Thus, a clear lure box or small plastic tackle box that is sold by a fishing tackle manufacturer will be subject to the 10 percent excise tax and such tax will in turn be reflected in the retail price of the article. The same box across the aisle in the Hardware Department will not be subject to the tax and would obviously sell for 10 percent less. We believe that such a result is unwarranted and inequitable and therefore urge the Committee to delete fishing tackle boxes from the list of covered articles.

* * *

Mr. Chairman. On behalf of my company and other similarly situated domestic manufacturers, I want to thank you for this opportunity to voice our concerns over the administration of the manufacturer's excise tax on fishing tackle products.

Senator PACKWOOD. I have some questions on that, when we finish the other witnesses, I want to ask you about.

Mr. Schedler.

STATEMENT OF THOMAS R. SCHEDLER, EXECUTIVE VICE PRESIDENT, ACCOMPANIED BY DARRELL J. LOWRANCE, PRESIDENT, AMERICAN FISHING TACKLE MANUFACTURERS ASSOCIATION, ARLINGTON HEIGHTS, ILL.

Mr. SCHEDLER. Thank you, Mr. Chairman.

My name is Thomas R. Schedler and I am executive vice president of the American Fishing Tackle Manufacturers Association, which is an international trade association comprised of some 400 manufacturers of fishing tackle and whose sales represent somewhere in the area of 90 percent of the domestic sales here in this country.

I am also joined today by the association's president, and president of Lowrance Electronics Manufacturing Co., Mr. Darrell Lowrance, who will also be available to respond to any questions that you might have, and I would hope he would have the opportunity to comment further on this very difficult first sale domestic versus foreign issue that Mr. Woolworth discussed with you just a minute ago.

Now, with your permission, I would like to just kind of summarize my remarks since you have received my prepared testimony earlier.

AFTMA has always been in support of the Dingell-Johnson program. This was a tax that was imposed upon the industry at our own request, and we continue to support the program and we do recognize the need for additional funding for the resource.

There have been many projects that have been accomplished throughout the years that have been beneficial to sport fishing, and I think logic would dictate that if we did not have some very serious difficulties with the inequities that are currently in the program that it would be to our members' best interests to support legislation calling for increased funding to provide for the protection and enhancement of the resource.

So we do object to one provision in the bill. We do strongly support the other three primary provisions, the reallocation of the motorboat fuel tax moneys; the reallocation of the import duties on fishing tackle and boating products; and most strongly the deferral issue, which is a much needed piece of legislation that our members need. But we cannot support the 10-percent excise tax to additional so-called fishing products and boating-related products. This does have substantial deficiencies in it.

Mr. Lowrance and Mr. Woolworth, hopefully, will comment further on the first sale problem, but the fact is that foreign manufacturers do pay about half the tax that a domestic manufacturer pays on a like product. And we are not looking for an advantage from one segment of the industry over another. I think all of our members who are domestic manufacturers are seeking nothing less than just fair and equal treatment with their importer counterparts. And I really think that this is basically what the U.S. House of Representatives intended when they, in their report, talked about the establishment of a constructive sale price.

I quote:

> The Committee intends that the Internal Revenue Service actively utilize this provision to ensure that the incidence of the excise tax on fishing equipment be equivalent for all manufacturers and importers regardless of their form of business organization.

One of the gentlemen on the panel that preceded us talked about the fishing tackle industry creating jobs, and that is true, but if this is not addressed, those jobs will be overseas and not in this country. So we say that to accomplish the objective of equalizing the competition between foreign manufacturers and domestic manufacturers, our association would respectfully submit that language be incorporated in the regulations governing the establishment of a constructive sales price, calling for the tax to be assessed on the basis of factory cost; that is, the manufacturers' level, both domestic manufacturers and importers.

And I want to stress that while this will not provide total parity between foreign and domestic firms, at least it will go a long way toward lessening this one inequity, which the D-J tax has enabled foreign manufacturers to have the competitive disadvantage for quite awhile.

There are other problems in the program—inadequate enforcement by the IRS, nonuniform interpretation, double taxation on certain products. The fact that the Treasury Department has inadequate manpower to enforce regulations on the current products much less additional products.

We would like to see this whole situation resolved. The deferral issue is a very significant issue, the effective date that you put in there of October 1, 1983, we strongly support that. Our association has said we will add fishing lines to the list of products to be taxed because we are interested in seeing this issue resolved and seeing the resource get the additional moneys that would result from all the other provisions in the bill. The fishing tackle portion of this is basically a $10 million impact, and we are talking about a $100 million package. We hate to see that delayed over a controversial--over a relatively few products that do have some question as to whether they should legitimately be included. So we do hope that the amendments, including the first sale, the factory cost being considered, the delay of the effective date for any additional products that might be in, as Mr. Howard testified, we just cannot have any additional products included unless that delay takes place somewhere in the end of the tackle year or the start of the new tackle year. It would be disastrous to our industry.

So I would hope that as we continue the dialog here this morning that we would be able to respond to any questions that you might have. Our president is here, willing and able to respond to your questions. And we thank you for the opportunity to testify today.

[The prepared statement of Thomas R. Schedler follows:]

AMERICAN FISHING TACKLE MANUFACTURERS ASSOCIATION

Statement of

Thomas R. Schedler

Executive Vice President

of the

American Fishing Tackle Manufacturers Association

2625 Clearbrook Drive

Arlington Heights, Illinois 60005

Before the

Subcommittee on Taxation and Debt Management

of the

Senate Finance Committee

on

H.R. 2163

August 3, 1983

AFTMA CENTER • 2625 clearbrook drive • arlington heights • illinois 60005 • 312/364-4666

Mr. Chairman: My name is Thomas R. Schedler and I am Executive Vice President of the American Fishing Tackle Manufacturers Association (AFTMA) which is a national trade association headquartered in Arlington Heights, Illinois, representing some 400 manufacturers of fishing tackle and related equipment. The sales volume of our membership represents over 90% of the fishing tackle sold in the United States and of our total membership, 97% of our members may be classified as being small businesses. The position that I will be presenting represents the official policy of AFTMA as established by our Board of Directors and subsequently approved by the majority of our membership.

Before commenting specifically on the provisions contained in H.R. 2163, I would first like to reiterate and emphasize the fact that AFTMA is, and always has been, in support of the Dingell-Johnson (D-J) Program. This excise tax was imposed on rods, reels, lures and baits, and creels some thirty years ago at the industry's request. I wish to restate for the record that we do recognize the need for increased funding for D-J and we are sympathetic to many of the attempts that have been made, and the efforts that have taken place, to find additional sources of revenue, some of which are embodied in this bill, for the resource through the Dingell-Johnson Program.

We concur with many of our colleagues in the recreational fishing community that, by and large, the projects that have been able to be accomplished in the states to improve freshwater fishing as a result of D-J funding, have been most beneficial to the consumer and vitally important to the fishing tackle industry.

It is with this in mind, our recognition that there must be a healthy resource available if there is to be an increasing demand for sport fishing and for sport fishing equipment, that we testify today in support of all but one of the provisions contained in H.R. 2163. Logic would dictate that if we did not have some serious, very real problems with this single provision, it would be in our best interests to support this bill in its entirety, for the well-being of our industry is greatly dependent on our natural resources.

The only provision AFTMA cannot support is the one calling for an expansion of the 10% excise tax to include additional so-called fishing tackle products, and the imposition of a 3% tax on electric trolling motors. This portion of the legislation, which would result in a $10-12 million increase to the D-J Fund, has substantial deficiencies in it, and, if enacted, would cause serious problems for fishing tackle manufacturers who have the responsibility for collecting and paying this excise tax. We have previously called many of these problem areas to the attention of the members of this Committee.

Permit me now to elaborate on one of the more serious problems as it relates to the existing application of the excise tax to domestically manufactured products versus those products that are imported. Based upon the definition and interpretation of what constitutes a "first sale," many importers are able to pay their excise tax at a level which equates to only about half of the tax liability that a domestic manufacturer has on a similar product. If the regulations governing this tax obligation were such that all manufacturers, be they domestic or foreign, had to pay the same amount of tax on a like product, then one of the major deficiencies in the current administration of this excise tax would be greatly reduced. For the record, I wish to state here that to the best of my knowledge, those domestic manufacturers who are members of AFTMA are only interested in receiving fair and equal treatment under the regulations governing the payment of the D-J excise tax, and not a competitive advantage over foreign firms.

And, apparently, this is what the U.S. House of Representatives also desires, for in the Report that was presented to the members of the House by the Committee on Ways and Means, in the section referring to the constructive sale price rules, it was emphatically stated that "The Committee intends that the Internal Revenue Service actively utilize this provision (Code sec. 4216) to insure that the incidence of the excise tax on fishing equipment be equivalent for all manufacturers and importers, regardless of their form of business organization."

To accomplish this objective, a goal which is consistent with the philosophy of the AFTMA, our association would respectfully submit that language be incorporated in the regulations governing the establishment of a constructive sales price calling for the tax to be assessed on the basis of factory cost, for both domestic manufacturers and importers. While this will not provide total parity between foreign and domestic firms, it will go a long way toward lessening this one inequity in the application of the D-J tax which has long afforded foreign manufacturers a competitive advantage over domestic firms.

The first sale inequity is only one problem confronting many fishing tackle manufacturers, that is, many AFTMA members, on an ongoing basis. Some of the other more significant problem areas with the current regulations governing the D-J excise tax include, 1), the fact that there is inadequate enforcement by the Internal Revenue Service which enables many smaller fishing tackle companies, especially the proverbial "moms and pops," to totally escape from paying their excise tax obligation, and 2), the non-uniform interpretation of the current regulations by the Internal Revenue Service thereby necessitating some companies to spend many thousands of dollars on legal fees and lost time in an effort to resolve the resultant disputes.

Another reason why AFTMA opposes this one provision is that, if the D-J tax was expanded to include all those fishing tackle products which have been unilaterally included for expansion in this legislation, in addition to the distinct possibility that there could be double taxation on certain products, there would also be a tax placed on some products which are not solely used for fishing, and this, therefore, would add to some of the difficulties previously described.

Further, as has been mentioned by the Treasury Department at previous hearings, accurate definitions for some of these products would be close to impossible to arrive at, thereby complicating the current enforcement difficulties. And finally, we would submit that a number of products on the expansion list are so minor in nature in terms of the revenue that they would generate, that it is entirely conceivable that the collection costs could exceed the income derived by an expansion of the D-J tax to those products.

AFTMA is vitally interested in resolving this very complex issue for, as stated earlier, our membership does recognize the value of the Dingell-Johnson Program. This is the very reason why we were in favor of this self-imposed excise tax back in 1952 when the program was established at our industry's request. Our membership has genuinely tried to arrive at mutually satisfactory, equitable solutions, which would generate a significant increase in the monies which would go into the Dingell-Johnson Fund without increasing the burdens of this tax to additional fishing tackle or boating manufacturers.

We have considered such potential solutions as a flat-rate tax on certain fishing tackle products. We have suggested that one of the most logical methods to raise additional revenues for the D-J Fund would be to have state fishing license fees increased. We have advocated the establishment of a national fishing license or stamp, one which would be structured along the lines of the universally-accepted Duck Stamp. And, last but not least, we have recommended that the D-J excise tax be collected at the retail level. We still believe each of these possible solutions has considerable merit, but for a variety of reasons, all of these potential alternatives to expansion of the D-J excise tax to additional fishing tackle items have been rejected, often precipitously, as being impractical or impossible.

In summary, therefore, AFTMA, for the reasons enumerated previously, must regrettably oppose H.R. 2163 in its present form. I say regrettably, because except for the expansion provision, the bill does contain a number of other excellent, supportable provisions, two of which alone have the potential for providing additional revenues of some $50-60 million for the D-J Fund, and another which would provide immediate relief to fishing tackle manufacturers by modifying the current regulations governing the payment of this excise tax.

This last provision, the one having to do with deferral, is most vital to our industry, for it recognizes the unfairness of the current regulations which often necessitate a manufacturer having to borrow money, at high interest rates, in order to pay his excise tax obligation on a timely basis and before he has even received payment for his goods. We are strongly supportive of this provision and its effective date of October 1, 1983 which coincides with what is generally accepted as the start of the fishing tackle year, and we would suggest that such a modification in payment would have a positive result on the U.S. Treasury.

Most recently however, in the spirit of compromise, AFTMA has endorsed the addition of organic, synthetic and metallic fishing lines. The inclusion of this additional product line should result in increased revenue of some $2-3 million for the D-J Fund in the first year. But we would also ask the Committee once again to recognize the industry year and not to have the expansion of the tax to fishing lines become effective until October 1, 1984. It is our hope that this compromise will be sufficient to enable all concerned individuals and organizations to collectively support the passage of H.R. 2163, with our recommended amendments, so that the resource can benefit from a much needed infusion of funds.

Without the provision calling for the expansion of the 10% excise tax to additional fishing tackle items, (except for fishing lines) and the 3% tax to electric trolling motors, AFTMA would be delighted to support H.R. 2163, for the result of the enactment of such legislation would be that the D-J Fund would be increased from its present annual amount of approximately $35 million to an amount which could approximate as much as $100 million and the industry would be collecting and paying the tax on a fair and equitable basis.

On behalf of the Board of Directors and many members of the American Fishing Tackle Manufacturers Association, I would like to thank the members of the Subcommittee on Taxation and Debt Management of the Senate Finance Committee for the opportunity to, 1) present our support of and views on the value of the Dingell-Johnson Program to the industry since its inception, 2) inform you about some of the current deficiencies in the regulations covering the payment of this excise tax, 3), enumerate the problems that would result for many of our members by an expansion of this tax to additional fishing tackle and related products, 4), express our endorsement of all but one of the main provisions contained in H.R. 2163 in recognition of the need for additional funding for the resource, and 5), offer a compromise solution to the expansion provision currently embodied in this legislation.

At your convenience, I will be most happy to answer any questions that the members of the Subcommittee might have regarding this controversial, very complex issue confronting the fishing tackle industry.

Senator PACKWOOD. Mr. Prosser.

STATEMENT OF NORVILLE S. PROSSER, EXECUTIVE SECRETARY, SPORT FISHING INSTITUTE, WASHINGTON, D.C.

Mr. PROSSER. Thank you very much, Mr. Chairman.

The Sport Fishing Institute is happy to appear before you and the other members of the committee with regard to H.R. 2163.

The relative well being of our Nation's aquatic resources reflect in no small measure the general quality of American life. Recreational fishing is a healthful, family-oriented activity that is widely recognized for its therapeutic rewards. However, often overlooked is the business side of recreational fishing. As has been testified to earlier this morning, recreational fishermen spent $17.3 billion on fishing-related activities in 1980.

As with other sectors of the U.S. business community, in order to expand and prosper, the recreational fishing industry will require increasing supplies of raw materials. A healthy, accessible, and expanding fishery resource is the one absolutely essential raw material required in common by all sectors of the recreational fishing industry.

The improvement of the fishery resource, on which greater demands are being made, will occur by increased capital expenditures specifically for intensified fishery management.

In February 1983 the Outdoor Recreation Policy Review Group presented findings from a careful review of issues and problems concerning outdoor recreation. That report clearly recognizes budget cuts at all levels of government have killed the momentum that led to the expansion of recreational opportunities in America.

The reduction in capital investment is clearly reflected in the statistics on angling participation. While the number of sport fishermen in the United States continues to increase each year, the increase in the number of anglers has slowed to an annual growth of less than one-third of 1 percent, compared to about 5 percent in previous years.

The stewardship of our public fishery resources reside with the Federal and State governments. Although the State fish and game agencies have made heroic efforts to increase fishing license revenues, the total purchasing power provided by license revenues in 1981 fell far short of meeting even the minimum operational costs.

Mr. Chairman, what more equitable system of funding for hard-pressed State fishery agencies can be fashioned than a user pay system which allocates collected revenues back into programs which restore and enhance the resource upon which the paying group depends.

The Sport Fishing Institute believes that the language embodied in H.R. 2163 provides a reasonable and equitable solution to the funding question, and the legislation is endorsed by SFI.

It has been estimated that more than 90 percent of all recreational boats are used for sport fishing purposes, at least some of the time. It is fair and equitable to use marine fuel tax receipts paid by the users of recreational boats to pay for boating safety, facilities and fishery restoration programs, as specified in H.R. 2163.

Similarly, the import duties collected on items of fishing tackle, yachts and pleasure craft, items generally used to utilize the Nation's fishery resources should be allocated to restore and protect those resources, again, as specified in H.R. 2163.

There is precedent for use of import duties in the Saltonstall-Kennedy Act to assist the impacted industry. In that case, duties collected on imported fish products are used to develop programs for the U.S. fishery industry.

As has been consistently noted in previous Sport Fishing Institute's statements on D–J expansion, there are certain problems and inequities in the manner in which the existing tax is applied. Resolution of these collection deficiencies which result in burdening certain sectors of the industry must be resolved. It is imperative that the excise tax on fishing equipment be equivalent for all manufacturers and importers, and that the tax not be allowed to constitute a competitive edge or margin for any sector of the tackle industry.

Thank you, Mr. Chairman.

[The prepared statement of Norville S. Prosser follows:]

STATEMENT OF THE SPORT FISHING INSTITUTE FOR THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT OF THE FINANCE COMMITTEE, U.S. SENATE, RE: H.R. 2163, A BILL TO AMEND THE FEDERAL BOAT SAFETY ACT OF 1971, AND FOR OTHER PURPOSES

The Sport Fishing Institute, which is located at 608 13th Street, N.W., Washington, D.C. 20005, is a non-profit, tax-exempt, broadly-based fishery conservation organization, staffed entirely by fisheries scientists, devoted to the protection, enhancement, and wise utilization of America's freshwater and marine aquatic resources. Our principal objective, by means of a program of ecological research, conservation education and professional service, is to help develop and promote optimum opportunity for Americans to engage in healthful and rewarding recreational fishing. Our financial support comes from manufacturers of fishing equipment and accessories and from many anglers and other concerned citizens.

The relative well-being of our nation's aquatic resources reflect in no small measure the general quality of American life. Recreational fishing is a healthful, family-oriented activity that is widely recognized for its therapeutic rewards. However, often overlooked is the business side of recreational fishing. Recreational fishermen spent $17.3 billion on fishing-related activities in 1980, according to the 1980 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, which was conducted jointly by the U.S. Fish and Wildlife Service and the Bureau of the Census.

As with other sectors of the U.S. business community, in order to expand and prosper, the recreational fishing industry will require increasing supplies of raw materials. A healthy, accessible, and expanding fishery resource is the one absolutely essential raw material required in common by all sectors of the recreational fishing industry.

The improvement of the fishery resource, on which greater demands are being made, will only occur by increased capital expenditures specifically for intensive fishery management. Applying modern fishery management techniques is expensive, although cost effective.

In February 1983 the Outdoor Recreation Policy Review Group presented findings from a careful review of issues and problems concerning outdoor recreation that have occurred since the historic Outdoor Recreation Resources Review Commission (ORRRC) report was published in 1962. That report clearly recognized that budget cuts at all levels of government have killed the momentum that led to the expansion of recreational opportunities in America. In part, this is a reflection of the current administration's thrust to reduce government involvement in areas attractive to private sector investment. However, due to the public trust aspect of fishery resources, there is no latitude for significant private investor involvement. Therefore, as pointed out by the ORRRC review, the consequences are that as a nation we are not meeting our commitment for the systematic development of outdoor recreation, including the provision of adequate fishing opportunities.

The reduction in capital investment is clearly reflected in the statistics on angling participation. While the number of sport fishermen in the United States continues to increase each year. The increase in the number of anglers slowed to an annual growth rate of less than 1/3 of one percent per year between 1975 and 1980 according to the 1980 Survey of Fishing, Hunting and Wildlife-Associated Recreation. This compares to an average annual increase of 5 percent per year for the previous 5-year period 1970-1975 and 3.4 percent for the period 1965-1970.

As noted, the fish and wildlife resources of this nation are public trust resources and, as such, the stewardship for these resources resides with the federal and state governments. The state fish and wildlife agencies have sought to increase revenues through license fees. Through the decade of the sixties, fishing license revenues kept pace with the rapid increase in angling participation that occurred then. However, accelerating inflation experienced in the 1970's and continuing through 1981 severely eroded the purchasing power provided by license sales. In fact, although the state fish and game agencies made heroic efforts to increase fishing license revenues (the total revenues generated have more than doubled and the average cost per angler has nearly doubled from 1970 through 1981), the total purchasing power provided by license revenues in 1981 fell far short of meeting even minimal operational costs of most fisheries agencies. Specifically, although the number of licensed anglers increased by nearly 20 percent between 1970 and 1981 (from 24,434,680 licensed anglers in 1970 to 29,277,241 in 1981), when adjusted to the CPI, license revenue remained virtually static over this same time (from $78,129,109 in 1970 to $78,173,595 in 1981).

Based on a recent survey conducted by the Sport Fishing Institute, efforts to obtain additional funding within the states by the appropriate state fishery agency continues. Thirty-three states currently are seeking authority to raise additional within-state revenue. The bulk of the remaining states are not seeking increases because they recieved some type of additional revenues during their last respective legislative sessions.

This resistance to raise fees within state legislatures, combined with a trend for those legislatures to bestow free or reduced-price fishing license privileges to a wide array of recipients as a social benefit, without compensating the state fishery departments, have created financial hardships for agencies. Therefore, fishing license fees as a sole revenue source is an inequitable and untimely way of financing recreational fishery programs. Until those deficiencies are resolved, fishery agencies will have to look, at least in part, to other sources, such as D-J, to provide increased income to finance their programs.

What more equitable system of funding for hard-pressed state fishery agencies can be fashioned than a user-pay system which allocates collected revenues back into programs which restore and enhance the resource upon which the paying group depends? The Sport Fishing Institute believes that the language embodied in H.R. 2163 provides a reasonable and equitable solution to the funding question. The legislation is a carefully written compromise which accommodates many of the interests of the boating and recreational fishing industries. The goal of the legislation is to distribute user-fees to enhance resources required by an industry in great need of assistance.

It has been estimated that more than 90 percent of all recreational boats are used for sport fishing purposes, at least some of the time. It is fair and equitable to use marine fuel tax receipts paid by the users of recreational boats to pay for boating safety, facilities and fishery restoration programs as specified in H.R. 2163.

Similarly, the import duties collected on items of fishing tackle yachts and pleasure craft, items generally used to utilize the nation's fishery resources, should be allocated to restore and protect those resources as specified in H.R. 2163. There is precedent in the Saltonstall-Kennedy Act for using import duties to assist an impacted industry. In that case, duties collected on imported fish products are used to develop programs for the United States fishery industry.

As has been consistently noted in previous Sport Fishing Institute statements on D.J. expansion, there are certain problems and inequities in the manner in which the existing tax is applied. Resolution of these collection deficiencies, which result in burdening certain sectors of the industry, must be resolved before taxes are collected from additional items of fishing equipment. It is imperative that the excise tax on fishing equipment be equivalent for all manufacturers and importers and that the tax not be allowed to constitute a competitive edge or margin for any sector of the tackle industry.

Senator PACKWOOD. Mr. Woolworth, if the problem of the imposition of the 10-percent tax could be solved, if, indeed, on the imports we could attribute the 10-percent tax to the legitimate sale and not the dodge, the middleman dodge, would that solve your problem on imports?

Mr. WOOLWORTH. Sir, I think all we can expect, that is American manufacturer's is to get equal treatment. What has happened, as I suggested before, is that we have been prejudiced since 1952 in this process. It has really gained so much momentum today. The answer to you that we still are faced with the 80 cents an hour labor from Korea. We are faced with 80 cents to a dollar an hour labor in Taiwan. There is about an hour's labor in every fishing rod, that is on average. If you add their labor and overhead and excise tax and duty, they pay about 10 cents for every hour's labor on a fishing rod at the boat. We pay $6 an hour and have fringes of about $1.80, a total of $7.80. And if you add the general selling and administrative and profit on that, we get up to around $14 an hour where we are taxed. So our excise tax is at somewhere between $1.30 and $1.40 on just the labor portion including the overhead and profit, compared to the first sale at the boat through circumventing the law of about 10 cents. So if you add up the 80 cents labor and the 15 cents overhead on that direct labor in Korea or Taiwan, it is less than what we pay just in excise tax.

Senator PACKWOOD. Well, that is what I am curious about. How are you going to compete even if the tax is levied fairly and levied where it should be, how are you going to manage to compete?

Mr. PROSSER. Mr. Chairman, can I address that question?

Senator PACKWOOD. Yes.

Mr. PROSSER. Because we are also impacted. In my particular company, we manufacture depth-sounders. Needless to say, consumer electronics is one of the most competitive markets and field there is, and we have always produced our own products here in the United States, and almost all of our competitors have been imports. There have been over 300 of them. At one time or another we have had four of the major rod and reel companies bringing in copies of our product from the Orient. We have been able to overcome that through technology and productivity.

The real issue behind this whole question of expansion to additional items boils down to an unequal interpretation and enforcement of the collection of this tax on the domestic manufacturer versus the importer. Essentially, the way it works is the domestic manufacturer pays the 10-percent tax on his selling price to his normal customers, a wholesaler, a retailer, a catalog house. That normal selling price includes the general administrative overhead. It includes the marketing cost, which is very substantial in consumer products, and it includes the profits. Companies in the United States that have attempted—U.S. companies that have attempted to establish a lower basis for this tax by such tactics as setting up a separate marketing company to avoid having the tax on their marketing cost them profits, have always lost in a court of law. In fact, one of the most recent cases, a lure company had back taxes of $900,000. They went for appeal. The banks lost confidence with that size of a liability, and the ironic thing of it is a major importer of lures purchased them.

Senator PACKWOOD. You are missing my point though. I want to know if the tax is fairly levied and fairly collected—and especially because I can see fishing rods are so easily made anyplace in the world, I assume—can you compete with overseas competition if the tax is fairly levied?

Mr. WOOLWORTH. It is a very tough question and, in answer to you, the first stage of what we need is some fair base of tax, where everybody pays the same.

The next one is we have to spend an untold amount of money to automate and to stay in the high tech world of fishing rods. We cannot compete at the low end, sir. We have to stay up in the higher priced automobiles and with all the bells and whistles. We get down in the low end, we are just wiped out. But what has happened is kind of like saying, "Can you get yourself on your feet after all the bridges are burned?" And that is a very difficult question. I think it would take longer than this committee wants to answer, but I would appreciate if this committee would take the time that it should to come up with a fair tax, that everybody's ox is gored at the same rate. As it is now, the American worker is really at stake. His job is already gone. The 10 percent that are left, the question is, OK, are we going to sacrifice them just to get the tax bill through.

Senator PACKWOOD. Well, I think you make a very fair case as far as I am concerned. I will do what I can to get the law to make the tax be enforced equally. I know the IRS says they will do it, but then they say they cannot do it.

Mr. WOOLWORTH. Sir, we met with them.

Senator PACKWOOD. I know you met with them in 1981.

Mr. WOOLWORTH. Yes, sir, they asked us to write letters of those we knew that were cheating, and that was below the dignity of the group. Again, if we do not get a clear language, when somebody says if you get taxed on cigarettes, or you get taxed on this, you know exactly what it is. But in this particular field, it takes two lawyers and two rulings. You can get one ruling on fishing rods in Los Angeles from the IRS, and in another district you can get another ruling, in Louisiana. There is also bartering going on where people are shipping west, and then offsetting with product east and netting out lower costs on imported goods, which we have heard people talk about, but we cannot verify it by any proof. But there are so many games going on in the importing business and, of course, the American manufacturer is just exposed. We are a public company and you can come in and look at our books any day in the week. But to get a constructive price of a Taiwanese company in Taiwan, owned by a Japanese manufacturer, with a part owner with a Japanese trading company, and this whole process of trading one within the other, there is no reason why they cannot lower the price of the rod out of Taiwan, send it to the United States, pay the tax at the boat, as the present law says—the 1952 bill—sell it back to themselves and take the profit in the United States. It is one of the biggest shell games that this country has ever seen.

Senator PACKWOOD. You make a very good case.

Sparky.

Senator MATSUNAGA. Thank you, Mr. Chairman.

What about the duty now on imported, tackle? What percentage is it now?

Mr. WOOLWORTH. I need some help on this. It is around 12 percent, sir, 12.1, I believe, and declining.

Senator MATSUNAGA. Now, would you suggest that the duty be raised in order to help your industry to survive?

Mr. WOOLWORTH. I have been lectured so long by the U.S. Government about free trade and fair trade, and how to resolve these two issues is a difficult one. If you gave me a chance to start in 1952 with a fair excise tax, and say, OK, we will start and nobody has any handicap, I would say, sir, we will go with the present duty structure. But the way they have really done this, we have had our ox gored so badly with these high excise taxes, I really think somewhere down the line that the country has to decide are we going to become, as somebody has suggested, strictly an importer of hard goods and become a service economy of selling each other hamburgers and insurance. I think we deserve some help in the duty area for a period of time to get back on our feet.

Senator MATSUNAGA. I think we are as much concerned here in the Congress about saving American jobs as perhaps you are. After all, we represent constituents who are affected. And we represent our constituents' views here. So what the chairman and I are trying to do is to find some way through this committee which has jurisdiction over taxes, tariffs, duties, et cetera, to help you to survive, and help this Nation to survive. And it is for that reason we have experts like you testify before this committee. And I am hoping, as the chairman is, that you might be able to suggest things that could be done and could be done not only equitably, but effectively.

Mr. WOOLWORTH. Well, we appeared before the International Trade Commission in 1981, with what you suggested. We were turned down with any help from the ITC on a basis that it was mismanagement in the fishing rod industry and, therefore, that was the reason it lost its position. Sir, in 5 years there is so much mismanagement in the fishing rod business that two American exchange companies went bankrupt, the Garcia Corp. and the Gladding Corp. And we saw the demise where, when we appeared before the ITC, we were only able to get four rodmakers to show up. We could not raise enough money of the $200,000 required to defend the case. We fought without counsel the other side in the ITC hearing; namely, Taiwan, Korea, all the Japanese trading companies, the Japanese manufacturers. We saw a list of nations facing us that we just got drowned. And it is only people like you gentlemen that have listened to our problem.

Senator MATSUNAGA. One last question: What is the difference in the final retail price of an American-made product and a similar imported product?

Mr. WOOLWORTH. I made, in my report, which you probably saw, our lowest retail would be somewhere in the $30 to $35, with very tight margins. An equivalent graphite rod from Korea or Taiwan, now we are getting into another thing, sir. They call it graphite, but then they say what percent. Do you want 5 percent graphite, 10 percent, 20 percent, but they are all called graphite. There is no distinction in the industry. So, in answer to you, their rod would probably sell for $19.95 and we are up around $35.

Senator PACKWOOD. Malcolm.

Senator WALLOP. Mr. Chairman, you questioned them on it. I do have a statement which I would like to have included in the record at the beginning of this testimony. I understand a couple of questions which I submitted were asked.

Senator PACKWOOD. I asked your question, and we will put the statement in at the start, and also a statement of Senator Baker.

Senator WALLOP. I appreciate it very much. I thank the people and witnesses, the various panels for their attendance here.

Senator PACKWOOD. Again, especially, I want to thank you. It is enjoyable to have somebody here who is in the business who is facing the competition.

As a matter of fact, I am familiar with your products. I fished a good deal as a kid and I was very pleased with your fishing equipment.

Senator WALLOP. You ought to keep it up.

Senator PACKWOOD. The fishing is not as good in the Potomac. Thank you very much. I really appreciate your help.

We will now move over to S. 1183, and we will conclude with a panel of David Storrs, William Farrell, and Matsuo Takabuki.

Let us wait just a moment, gentlemen, to allow people to leave the room, and then we will start.

All right, Mr. Storrs, are you ready?

STATEMENTS OF DAVID K. STORRS, DIRECTOR OF INVESTMENTS, YALE UNIVERSITY, NEW HAVEN, CONN.; WILLIAM J. FARRELL, ASSOCIATE VICE PRESIDENT, EDUCATIONAL DEVELOPMENT AND RESEARCH, UNIVERSITY OF IOWA, IOWA CITY, IOWA; MATSUO TAKABUKI, TRUSTEE, KAMEHAMEHA SCHOOLS/BERNICE P. BISHOP ESTATE, HONOLULU, HAWAII, ACCOMPANIED BY WILLIAM MORRIS, ESQ., REID & PRIEST, WASHINGTON, D.C.; GABRIEL RUDNEY, SENIOR RESEARCH ASSOCIATE, YALE'S INSTITUTION FOR SOCIAL AND POLICY STUDIES, AND JOHN COPELAND, PRIVATE CONSULTANT

Mr. Morris. Mr. Chairman, if you will permit me, my name is William Morris. I am an attorney with the law firm of Reid & Priest, with offices in New York City and Washington, D.C., and I would like to introduce the members of the panel and two gentlemen who are accompanying the panel today.

The panel is composed of Mr. David Storrs, director of investments for Yale University; Mr. William J. Farrell, associate vice president, University of Iowa and Mr. Matsuo Takabuki, trustee of Kamehameha Schools/Bernice P. Bishop Estate. Joining the panel are Mr. Gabriel Rudney and Mr. John Copeland. Mr. Rudney is a senior research associate at Yale University's Institution for Social and Policy Studies. Mr. Copeland is a private consultant. Both are former economists with the Treasury Department, and they have prepared a study regarding the substance of S. 1183, which we have submitted for the record.

Senator Packwood. Mr. Morris, you, represent either their association or the school?

Mr. Morris. I represent the Kamehameha Schools, and I have also been working with various educational groups that are interested in the legislation. And I am very pleased to advise the subcommittee that this panel is testifying on behalf of, or the testimony of the panel is endorsed by the American Council on Education, the National Association of Independent Colleges and Universities, the American Association of Universities, and the National Association of Independent Schools.

Senator Packwood. Thank you.

Mr. Storrs, do you want to start?

Senator Matsunaga. Mr. Chairman, I have an opening statement which I would like to have included in the record.

Senator Packwood. Without objection.

[The opening statement of Senator Matsunaga follows:]

STATEMENT OF THE HONORABLE SPARK M. MATSUNAGA
ON S. 1183, A BILL TO EXEMPT FROM THE TAX ON UNRELATED
BUSINESS INCOME CERTAIN DEBT FINANCED
INCOME OF EDUCATIONAL INSTITUTIONS
BEFORE THE FINANCE SUBCOMMITTEE ON
TAXATION AND DEBT MANAGEMENT
215 Dirksen Senate Office Building
Wednesday, August 3, 1983

Mr. Chairman, thank you for scheduling this hearing on S. 1183 which I introduced with Senators Russell Long, Lloyd Bentsen, Daniel Moynihan, Dave Durenberger and Charles Grassley. Last year, the taxation and debt management subcommittee held similar hearings on this bill as S. 2498.

S. 1183 addresses the problem faced by educational institutions when investing in debt-financed real estate. Under present law, when a tax-exempt organization borrows money to buy any form of real estate, it may incur a tax liability. If the purchased property is substantially related to the organization's exempt purpose--such as a new dormitory to house students enrolled at a college--there is no adverse tax effect. But if the property is acquired for investment purposes and is unrelated to the organization's exempt purpose, the organization will suffer a penalty tax.

The penalty tax is imposed on a percentage of the net investment income from the property. This percentage represents the ratio of the outstanding mortgage to the cost basis of the property. The penalty tax thus applies to property purchased with borrowed funds. In addition, the tax also may apply to gifts and bequests of property which the tax exempt organization receives subject to an outstanding mortgage or debt.

Background of Present Law

A variation of this penalty tax was applied to certain tax exempt organizations in 1950, when the tax was imposed on rental income from debt-financed real property. In 1969 Congress expanded the tax to apply to all exempt organization's and to all debt-financed property unrelated to the organization's exempt functions.

The 1969 Tax Reform Act addressed tax sham transactions. An operating non-tax exempt business in such a transaction could convert ordinary income into long-term capital gains by way of an intermediary exempt organization. The exempt organization would eventually acquire the operating business assets with little or no payment of its own funds. In effect, the tax benefits provided through the use of the tax exempt organization paid for the acquisition.

For example, a business would sell its operating assets to a university on a deferred payment basis. The university would be obligated to make payment only out of earnings from the assets. The university would then lease the assets to a new company formed by the original business. The company's rental payments to the university would equal the university's contract payment to the business on the deferred purchase.

As a result of this transaction, the business earnings from the operating assets become deductible as rental payments to the university. The university returns the earnings to the business in the form of more favorably taxed, long-term capital gains, thus paying off the purchase cost of the business asset. An inflated price or an open end price for the property also provides the business with a significantly higher return before actual ownership passes to the university.

The 1969 Tax Reform Act ended this type of sham transaction by imposing the penalty tax on debt-financed income.

1980 Exception for Pension Trust

The 1969 Tax Reform Act has effectively controlled the acquisition of businesses by tax-exempt organizations for the purpose of utilizing their tax-free status. But the penalty tax has also prevented legitimate investments in debt-financed real estate, thus hampering investment diversification by exempt organizations.

The Senate Finance Committee examined this restriction in 1980 and approved a special rule for tax-exempt pension plans. The 1980 Miscellaneous Revenue Act created an exception from the penalty tax for a pension plan's purchase of mortgaged real estate. To prevent the pre-1969 abuses from recurring, the legislation imposed certain safeguards:

First, the purchase price must be a fixed amount and not open ended.

Second, the debt payment cannot be contingent on earnings from the property.

Third, the property cannot be leased back to the seller or to a party related to the seller.

Fourth, the property cannot be leased back to certain persons disqualified under the pension provisions.

Fifth, the property cannot be financed by a nonrecourse loan from a party either related to the seller or related to a person disqualified under the pension laws, if the loan is subordinate or if the loan carries less than the going interest rate.

This exception presently applies only to tax exempt employee pension trusts.

Proposal

Educational institutions, like pension plans before being excepted, have been deterred by the penalty tax from investing in debt-financed real estate. Private colleges and schools have the same need as pension plans to diversify their investments and maximize their investment income. That need has been dramatically increased in recent years due to rising costs and cuts in Federal assistance programs. To meet this need these schools must diversify their investments, but are unable to buy significant real estate without borrowing money.

S. 1183 would extend the present exception accorded pension plans to educational organizations, including colleges and schools. The same safeguards applicable to pension trusts would apply to prevent abuse by educational organizations.

Witnesses testifying today on S. 1183, I am sure, will show the clear need for its enactment. Again, I thank you, Mr. Chairman for scheduling this hearing. Thank you.

Senator MATSUNAGA. And before they begin, I would like to especially welcome Mr. Matsuo Takabuki, who was one of the early ones among the young veterans who returned from World War II to go into politics. We started out about the same time, he in the city council and I in the territorial house of representatives. And he was smart enough to get out of it, to serve as trustee of Bishop Estate, in which position, he probably wields more power and makes more money than any of us who continued to remain in politics.

So I take this opportunity to welcome him to the panel.

Senator PACKWOOD. It is good to have you with us, gentlemen.

Mr. MORRIS. Mr. Storrs, excuse me.

Mr. STORRS. Thank you, Mr. Chairman.

Because the committee has my formal statement, I will concentrate on the major points of that statement to save time.

Yale was founded in 1701. It is independent and nonsectarian, and we educate about 10,000 students, graduate and undergraduate men and women in every department.

We currently draw about 10 percent of our operating income from our endowment fund. That is about $40 million. Thirteen years ago that figure was 25 percent. In other words, we are getting less than half the contributions to scholarships, faculty members, and other educational expenses that we used to. The main reason is the stock and bond markets have performed poorly in recent years for a whole set of reasons, even including the recent extraordinary rise in the stock market. We, therefore, as an investment strategy, have attempted to diversify into other areas, the largest of which is real estate, where we are seeking to invest 10 percent of our portfolio.

We have about 100,000 alumnae, and we use many of those alumnae to help us with our investment program as informal advisers and finders of attractive property. We do not use any debt financing as we make real estate investments because of the tax penalty which is imposed by the current section 514 rules.

In the example, which is the fifth page of my statement, I show a property, an example of a property which is a $20 million investment, earning 13 percent. If we could finance half of that with a mortgage, perhaps an existing mortgage on the property, that the original owner took out at 12 percent, we would increase our return on our $10 million required to 14 percent. Unfortunately, because of the tax, we would give up, as you see at the bottom of that column, the year 1 column, we would give up almost a percent and lost almost 7 percent of the otherwise available income to the tax.

The problem becomes worse and worse as depreciation deductions are used up and as the particular formula under which taxable income is calculated increases the percentage of income subject to tax. In year 16, for instance, a property which is earning 14 percent for us, we only get 7.6 percent. We get only half of the income that was earned on the property, even though we are otherwise a tax exempt organization, devoted exclusively to educational purposes. If that property had not been financed, if it had been a stock, a bond a debenture capital investment, or any of many other investments, we would have received full investment income. The practical result of this is that, a number of things: First, we do not make any leveraged investments and we pass up opportunities to take on otherwise attractive debt. We also pass up opportunities to buy attractive real estate which has debt on it. We also have to put in much more money into every property. Instead of, in this example, putting $10 million in, we have to put $20 million in. We, therefore, cannot diversify the property effectively, as would be useful.

The other problem is that we lower—earn a lower return on whatever real estate we make. Because pension funds, for instance, pay no tax, we earn a significantly lower return than they earn. And I could point out that a taxable investor often can use real estate not only to pay no tax on the real estate income, but actually to reduce his tax from other kinds of income. He, therefore, effectively enjoys a negative tax on the real estate property.

A pension fund enjoys a zero tax.

Universities and colleges are the only group which have a positive tax on this form of income, and we are simply looking for the opportunity to have the same zero tax that we have in all other investment areas and the pension funds currently have on investments of this type.

A special problem has to do with properties, let us say, on the campus which need improvement. Because they typically do not produce enough income to improve the property out of cash flow, an ordinary investor would borrow to make the improvements and pay off the borrowing out of income from the property, the now improved property.

If we do that, we will give up 46 percent of the income to tax, and that becomes an unacceptable route to take. And, therefore, one consequence is that we cannot improve property as much as we would like.

The Treasury last year reported that section 514 does not preclude leveraged real estate investments. We believe that, although that is technically true, there is a de facto prohibition because we would never make investments with a 46-percent tax rate when we could make untaxed investments.

I also would question the Treasury's view that the exempt purpose of pension funds, the payment of employee benefits, is sufficiently more important than the education of Americans that the tax treatment of pension funds should be so much better for that area. I would also question the statement that pension funds pay out income which is ultimately taxed to pensioners and universities do not. In fact, of course, pension fund income is not distributed often for 20 or 30 years, whereas, virtually all endowment income is distributed in the form of wages and salaries or payments to outside vendors and taxed in a year or two of this earning.

A number of options have been discussed with the Treasury trying to resolve some of their problems having to do with pro rata allocations, nonrecourse financing, and other rules, some of which were discussed this morning by Bob Woodward. We would seek to find a route that would come to a compromise that would permit us to make the type of investments that we should be making. We should not be making—be in the tax shelter business, as this bill, unfortunately, requires us to be—as the current 514 requires us to be.

We should be long-term investors. We own property now, for instance, that we bought in 1732, and that is the way it should be. We should not be in-and-out traders, using a lot of fancy vehicles to reduce our taxable income. We ought to find an attractive property and hold it for a long period of time. We are not able to do that under the current section 514 law. I, therefore, believe that this proposal, S. 1183, which we believe prevents the abuses the Treasury is concerned with, or could be made to prevent them through appropriate changes, makes major improvements to the ability of the American universities to earn income, all of which is used for educational purposes.

We, therefore, support this bill.

Thank you, sir.

[The prepared statement of David K. Storrs follows:]

STATEMENT OF DAVID K. STORRS
DIRECTOR OF INVESTMENTS
YALE UNIVERSITY, NEW HAVEN, CONNECTICUT
Before the Subcommittee on Taxation and Debt Management
Committee on Finance
August 3, 1983

Thank you for the opportunity to comment on S. 1183. I am Director of Investments at Yale University.

Yale is an independent, non-sectarian university founded in 1701. We currently educate about 5,100 undergraduate students and 5,000 graduate and professional students, both men and women in every department.

We have been under significant financial pressure in recent years. We utilize as productively as possible all our financial resources, especially the endowment fund. We currently draw about $40 million per year from the endowment for educational purposes. That is about 10% of the budget. In 1970, by contrast, the endowment provided about 25% of our budget. The endowment supported, in other words, twice today's proportion of scholarships, faculty, and other educational needs.

The primary reason for this sharp decline is that returns on the stock and bond markets in recent years have been low, even with the recent stock market rise. That has led us to diversify the portfolio into other areas with higher returns, especially real estate, where we are seeking to invest about 10% of our fund. We are also interested in real estate's inherent stability as a method of dampening the volatility of the stock and bond markets.

To date we have not used mortgage debt financing, or leverage, when we make real estate investments. The simple reason we don't use leverage is that the unrelated business income tax penalty caused by Section 514, the subject of this amendment, in most cases significantly reduces the after-tax return on leveraged properties.

The example on the attached sheet shows a $20 million investment in a warehouse property rented for $2.6 million per year, or 13%. That is the unleveraged return before any debt. If we could purchase that property with an existing 12% mortgage of $10 million, we would only need to provide $10 million of University funds. Also, we would increase Yale's annual return on its own equity investment from 13% to 14% because the interest rate on the existing debt is lower than the return on the property being purchased.

The first column on this sheet ("Year 1") shows that the net cash return is reduced from 14% to 13.1% because of the unrelated business income tax. This is a 6.7% reduction in income to Yale. As the annual charge for depreciation reduces the "basis" of the property, the percentage of income which is subject to tax increases steadily until 100% of the income is subject to tax. In year 11, for instance, we would be paying a tax rate of 46% on all the net income of this property. Instead of earning 14%, we would be earning only 12.2%, 13.1% less, after paying income tax, and only 7.6%, or 46% less, when depreciation deductions no longer sheltered income from taxation beginning in year 16.

This is a simple example. If, as is more likely, income on the property were to grow over time, the tax would cause an even larger reduction in return to the University. While the particular assumptions as to return on the property, interest rate on the borrowings, depreciation schedules, etc. produce different consequences, it is always the case that the return to Yale on a particular property is reduced by Section 514's taxation.

The first unfortunate result of the Section 514 taxation is that an otherwise attractive financial decision, to assume an existing below-rate mortgage, is made unattractive. The second unfortunate consequence is that a property which could have been purchased with a $10 million investment now requires $20 million, and only half as many properties can be bought with a given amount to invest. A university is less well diversified and more exposed to risk in its investment portfolio. The third problem is that a university devoted exclusively to educational purposes is required to choose between devoting part of its income to paying federal tax or turning down otherwise desirable opportunities in an attractive real estate market.

Those universities which choose not to engage in any endeavors unrelated to their educational purpose, whether on the basis of an inferred Congressional disapprobation or for other reasons, will be totally foreclosed from all leveraged investments, whatever the after-tax return may be.

Also, educational institutions will typically earn lower investment returns on real estate than will other tax-exempt funds, primarily retirement funds, which are not assessed the penalty tax. If a pension fund will earn 15% on a property and a university will earn 13.5% after unrelated business income tax, the pension fund can afford to pay 10% more than the university for the identical property and universities cannot compete effectively for investments. Especially given that retirement funds assets of about $700 billion dwarf the $30 billion of endowment funds, we see no need to discriminate in this manner against universities and colleges.

A special problem involves properties which need significant renovations. These might often be properties on the campus which produce income. Typically there is not enough income from such a property to pay for major renovations such as new roofs, plumbing or wiring systems, etc. The way a normal investor would handle this problem would be to finance the cost of the renovations and pay off the financing over time from income of the property. If we do that we will subject the property to income tax. One unfortunate result of Section 514 is therefore that properties cannot be improved as much as we would like.

The intent of Section 514 was not to reduce the ability of educational institutions to invest in real estate, or to reduce their returns on real estate, but to curb abuses in which the tax exempt entity was used as a conduit for a taxable entity. S. 1183 includes the same provisions to prevent abuses that were voted by the Congress in the Miscellaneous Revenue Act of 1980 when it exempted pension funds from this tax. Pension funds are worth over twenty times the value of educational funds, and we see no basis for continuing to tax otherwise exempt educational funds while exempting pension funds.

The Treasury last year reported that Section 514 does not preclude leveraged real estate investments. Although technically true, we believe that Section 514 acts as a de facto prohibition on leveraged real estate investments, simply because we would never purchase properties with a 46% effective tax rate when we could purchase stocks, venture capital securities, bonds, options, and other investments with no tax liability. Through in-and-out trading and devices such as advance payment of mortgage loans, it is true that the tax can be reduced somewhat, but this has its own problems. Universities are and by nature should be long-term investors, not short-term speculators with one eye out for techniques to shelter income from federally-imposed taxation.

Section 514 was originally written to curb actual abuses by tax-exempt organizations. Those abuses are prevented by the five exceptions enumerated in S. 1183. The result of continuing Section 514 in its present, unamended form is therefore to prevent not abuse by tax exempt organizations, but proper investments in a market, real estate, which has provided and we expect will provide attractive investment returns. S. 1183 would permit universities to use more prudently the donated endowment funds entrusted to them in perpetuity by stabilizing and increasing the return on those funds at no cost to the Treasury.

I am not here to ask that universities receive federal subsidies or exemptions from any law, but simply that tax-exempt entities be treated in a manner which does not systematically change their investment opportunities to the detriment of present and future students. I believe S. 1183 prevents the abuses originally targeted by Section 514, and eliminates the existing, unintended effect of Section 514 by taxation to discourage universities from making otherwise attractive investments.

For all these reasons we support the passage of S. 1183.

Thank you for your consideration.

Effect on Real Estate Return of Unrelated Business Income Tax

	Year 1	Year 11	Year 16
Gross income (13%)	$2,600,000	$2,600,000	$2,600,000
Interest expense (12%)	1,200,000	1,200,000	1,200,000
Cash flow	1,400,000	1,400,000	1,400,000
(as % of Yale equity)	14.0%	14.0%	14.0%
Depreciation	1,000,000	1,000,000	-0-
Net income	400,000	400,000	1,400,000
Average debt	10,000,000	10,000,000	10,000,000
Average basis	19,500,000	9,500,000	5,000,000
% income taxable	51%	100%	100%
Taxable income	204,000	400,000	1,400,000
Tax	94,000	184,000	644,000
Net return after tax	1,306,000	1,216,000	756,000
(as % of Yale equity)	13.1%	12.2%	7.6%
vs. untaxed 14%	-.9%	-1.8%	-6.4%
% reduction	-6.7%	-13.1%	-46.0%

Assumptions

1) $20,000,000 purchase price.
2) $2,400,000 annual rent (13% on purchase price).
3) $10,000,000 loan.
4) Interest-only loan payments at 12%.
5) 15 year, straight-line depreciation on 75% of purchase price (land value = 25%)
6) 46% tax rate.

Senator **Packwood**. Senator Grassley.

Senator **Grassley**. Mr. Farrell is a friend of mine and also a constituent. He does his job very well as liaison for the University of Iowa with the Federal Government. And he has been visiting with me over a period of at least 2 years about this piece of legislation. I am glad that we can have you come in and testify in support of it. And if I leave here early as I got here late, I am going to go over to the doctor's office, I do have a question that I want to leave with the chairman to ask you at the end of your testimony. I appreciate your coming.

Senator **Packwood**. Thank you, Chuck.

Mr. Farrell.

Mr. **Farrell**. Thank you for your kind introduction, Senator.

I am testifying today on behalf of S. 1183, a bill which has been introduced by Senator Matsunaga and which is supported by our own Senator Grassley. He is a good friend of education, something we at the University of Iowa have known for a long time, and it is not surprising that he is supporting this very important measure.

In 1969, Congress took steps to prevent tax-exempt organizations, including universities, from using their tax-exempt status to pay for the acquisition of operating businesses.

Now, we think that that was a perfectly proper measure to take. At the same, time, unfortunately, it has had some side effects which have not been advantageous to higher education. I think the members of the committee have some copies of my testimony talking about those disadvantages, Let me just briefly summarize what they are.

First of all, one of the great problems is that it has discouraged universities from really seeking mortgaged property as a form of voluntary support for education. I talked recently to our director of the University of Iowa Foundation, and he tells me that very few directors of development seek this kind of voluntary support. And I know, as a former fundraiser, that that is really unfortunate because this could be a very important asset today as educational institutions cope with the problem of diminished Federal and State support. It is a form of voluntary support which would be very important and very advantageous. But the problem really goes beyond that, because not only does it discourage universities and schools from seeking that kind of charitable help, it also takes away some of the flexibility that they have in using those charitable contributions once they receive them.

Let me give you just one example. Several years ago the University of Iowa Foundation purchased a building in downtown Iowa City for the use of the university. We use six floors of that building and the seventh floor, the street floor, is rented out to businesses. Unfortunately, the University of Iowa Foundation has to pay between 20 and 30 percent tax on that unrelated business taxed income that they receive. If they were to have made that investment on a purely business basis, they probably would not have made it. The only reason why they purchased the building is that the university needed the space.

In many cases, very good investment decisions are not made because of the provisions of the current law. For example, some years ago we would very much like to have built some property to house junior faculty on a rental basis at the University of Iowa. But because it involved debt-ridden financing, the University of Iowa Foundation reluctantly departed from undertaking what would have been a very worthwhile venture. Because of this, not only does this disadvantage the universities, but it is also a disadvantage to some of our community.

We have a piece of property outside of the small city of Muscatine, 325 acres, that we would very much like to sell, and that the city of Muscatine would very much like to see developed. In the economy today, we cannot sell that property without, in effect, becoming developers and entering into debt-ridden mortgaging. It is simply not a good path for the foundation to take and, somewhat reluctantly, we have not undertaken what would have been a great opportunity, not only for us, but for an important community in our State.

We believe that the measure which has been proposed by Senator Matsunaga, which is cosponsored by Senator Grassley and some other important members of the Senate Committee on Finance, will rectify this problem and, at the same time, prevent the kind of abuses that originally prompted the current law to be passed.

Before I conclude my testimony, there is one special provision of this bill that I would like to single out for special praise, and that is the fact that S. 1183 extends this exemption not only to schools and universities, but also to their affiliate organizations. And that is terribly important to the University of Iowa. Most public universities must use private foundations for practical purposes to sustain charitable gifts. Even some private institutions do that.

We are very pleased to see that in the new version of this bill, affiliate organizations are also included as part of the exemption.

Thank you.

[The prepared statement of William J. Farrell follows:]

STATEMENT
of
William J. Farrell

Associate Vice President for
Educational Development and Research

at The University of Iowa

before

The Subcommittee on Taxation and Debt Management

U.S. Senate Committee on Finance

August 3, 1983

on

S. 1183

W. J. Farrell

Mr. Chairman and Members of the Subcommittee, my name is William J. Farrell, and I am the Associate Vice President for Educational Development and Research at The University of Iowa. I am testifying today on behalf of the American Association of Universities regarding Senate bill S. 1183. Introduced by Senator Matsunaga and co-sponsored by our own Senator from Iowa, Senator Grassley, as well as other distinguished members of the Senate Committee on Finance, this bill provides educational institutions with welcome relief from the unrelated business income tax imposed on "debt-financed" real estate income.

In 1969, Congress took steps to prevent exempt organizations--including universities--from using tax benefits to pay for the acquisition of operating businesses. The tax-reform act of that year properly brought to an end tax-sham transactions that had no legitimate reason to exist. In the process of accomplishing this reasonable goal, however, it also prevented justifiable investments in debt-financed real estate for such organizations. This has created at least three serious disadvantages for institutions of higher learning.

Because of the penalty tax on debt-ridden real estate, an important source of private gift support is lost to colleges and universities. The director of our University Foundation informs me that his organization makes little or no effort to seek out mortgaged properties as contributions to our University. His practice is commonplace in the country today, even though most development officers regard mortgaged real estate as a potentially major form of assistance. In these days of declining public assistance on both the federal and state level, it is important that every reasonable encouragement is given to both institutions and contributors to increase private, voluntary support to higher education. A significant way in which that encouragement could be granted would be to abolish the unrelated business income tax on debt-financed real estate for universities and colleges.

In the past, this tax has not only restricted private sources of support for institutions of higher education, but it has also discouraged their use of gift revenue in the most flexible and productive ways. Let me give you a couple of examples. In recent years, at the request of the University, the UI Foundation purchased the office section of a large building in downtown Iowa City. Six out of seven floors in this building are used by the University for its own purposes. Nonetheless, under current law, the University of Iowa Foundation had to pay 20 to 30 percent of its net income on the remaining seventh floor as "unrelated business income tax." A claim for refund was denied by the Internal Revenue Service, because the facility was debt-financed. While the Foundation undertook this course of action in this case, it did so at a real loss to its income, considering other investment alternatives. Sometimes this lack of flexibility in using gift resources for mortgaged real estate results in the abandonment of worthwhile projects. One of the reasons why the UI Foundation was discouraged from undertaking a program to provide housing for young faculty, for example, was precisely because of the penalty tax on debt-ridden property income.

In addition to limiting the universities and colleges in meeting their own needs with gift resources, the current law also restricts the efforts of educational institutions to serve the investment needs of communities in their area. In the recent past, for example, the University of Iowa Foundation received a gift of 325 acres of land near the city of Muscatine. In the present economy, the Foundation would need to become involved in the development of this land to affect a sale, and, in so doing, it would have to undertake debt-ridden financing. Such real estate investments could greatly serve the interests of both the Foundation and the community. The current tax provisions of debt-financed investments for public charities diminish the incentives of pursuing this course, however. As a result, disposal of this property may have to await other economic conditions and the opportunity for an important development effort in an Iowa community will be lost.

It is our belief that Congress would help both higher education and the general economy by exempting educational organizations and affiliate foundations from the tax provisions that discourage debt-financed investments. Senator Matsunaga's bill, S. 1183, would be a major step toward accomplishing this goal, and it would do so without sacrificing the original legitimate objectives of the current law. In fact, the bill would simply extend to educational institutions an exemption that was granted to tax-exempt pension trusts in 1980. The measure is right in principle, and on that basis alone it has our unqualified support.

Those of us from public institutions are especially pleased to see that S. 1183 extends the benefits of exemption, not only to educational institutions, but also to their affiliated support organizations as well. This is an important provision. Many publicly assisted universities including The University of Iowa, must rely for practical purposes on an independent private foundation to secure and to invest private contributions. About half of our revenue at The University of Iowa comes from non-state sources, and the UI Foundation plays an important role in contributing to that portion. It would be extremely limiting, therefore, to provide the benefits of exemption solely to those educational institutions that directly receive and invest gift revenues on a long-term basis. Even some private institutions are dependent on affiliated support organizations.

Fortunately, S. 1183 recognizes this complexity and extends the exemption to both affiliated support organizations as described in IRC Section 509(a) as well as qualified trusts. We are grateful for this change in language from that in an earlier version of the bill. It means that S. 1183 will serve the greater higher educational community and not simply a portion of it. Thank you.

Senator PACKWOOD. Thank you.

Mr. Takabuki.

Mr. TAKABUKI. Mr. Chairman, I am pleased to be here today and want to take this opportunity to thank you for scheduling this hearing on S. 1183. And thank you, Senator Matsunaga, for your very kind remarks.

My name is Matsuo Takabuki. I am a trustee of the Kamehameha Schools/Bernice P. Bishop Estate, of Honolulu, Hawaii.

The Kamehameha Schools were established under the last will and testament of Princess Bernice Pauahi Bishop, the great great granddaughter and the last heir of King Kamehameha I. The schools were first opened in 1887, and have been in continuous operation since that date. The legacy to provide for the operation of the schools were the lands owned by the Princess at the time of her death.

I am here today from Hawaii to testify in support of S. 1183. S. 1183 would amend the Internal Revenue Code to permit tax-exempt educational organizations to borrow money for the purpose of acquiring or improving real estate without having to pay the tax on unrelated business income on income derived from real property. Under the present law if a tax-exempt educational organization invests in debt-financed property, all or a portion of the income derived from such property is subject to the tax.

The provisions of law, of section 514, requiring the taxation of such income was originally enacted in 1950. It was broadened by the Tax Reform Act of 1965. Both the original legislation, as well as the 1969 amendments, were designed to discourage certain abuses of tax-exempt status. Specifically, the 1969 legislation was intended to prevent sham transactions in which taxable organizations sold assets to tax-exempt organizations at an inflated price and then leased back the assets to the seller. This type of arrangement permitted taxable corporations to convert ordinary income to capital gain and permitted the tax-exempt organization to eventually acquire assets without any out-of-pocket costs.

S. 1183 contains a number of precisely worded safeguards to prevent the pre-1969 abuses from recurring. S. 1183 would permit tax-exempt educational organizations, if the safeguard requirements are complied with, to finance real property acquisitions and improvements without being subject to the tax on unrelated business income.

Today, more than ever before, many educational organizations are facing a tremendous shortage of funds. This is a result of many factors, not the least of which are the state of our economy and the cutback of many Federal and State programs. S. 1183 provides a means whereby tax-exempt organizations can attempt to meet their own funding needs while still providing protection against the abuses which have occurred in the past.

I respectfully submit that S. 1183 strikes the necessary balance between the need of educational organizations to finance their legitimate activities and the need of the public to be protected against abusive use of the tax laws.

It should also be noted that the legislation will promote a more balanced investment portfolio for tax-exempt organizations. I think we are all aware that prudent investment calls for diversification of an investment portfolio. And the passage of this particular amendment would afford the opportunity to educational institutions to diversify in real estate, and it would permit tax-exempt educational organizations a flexibility to invest a prudent portion of their portfolio in productive income-producing real estate investments.

In the case of the Kamehameha Schools the potential imposition of this tax impedes our effort to fund a broad range of educational services to the children of Hawaii. We simply must defer or not undertake many important programs because our income cannot be increased quickly enough through more rapid development of our income-producing properties. We are unable to totally finance all of the development projects we could be undertaking to generate the income needed for the expansion of our educational programs without debt financing as permitted under S. 1183.

We would, therefore, urge the Senate Finance Committee to act favorably on S. 1183.

Thank you very much.

[The prepared statement of Matsuo Takabuki follows:]

STATEMENT OF
MATSUO TAKABUKI
TRUSTEE,
KAMEHAMEHA SCHOOLS/BERNICE P. BISHOP ESTATE
HONOLULU, HAWAII
BEFORE THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
COMMITTEE ON FINANCE
AUGUST 3, 1983
ON
S. 1183

Mr. Chairman, I am pleased to be here today and want to take this opportunity to thank you for scheduling this hearing on S. 1183. My name is Matsuo Takabuki. I am a trustee of the Kamehameha Schools/Bernice P. Bishop Estate, Honolulu, Hawaii. The Kamehameha Schools were established under the Last Will and Testament of Princess Bernice Pauahi Bishop, the great-granddaughter of King Kamehameha I. The trustees of her estate were instructed"to erect and maintain in the Hawaiian Islands two schools. . . one for boys and one for girls, to be known as . . . The Kamehameha Schools." The Schools were to provide for the education of native Hawaiian children. The Schools were first opened in 1887 and have been in continuous operation since that date. The legacy to provide for the operation of the Schools were the lands owned by the Princess at the time of her death. These lands represent approximately 10 percent of the land area of the state of Hawaii. Approximately 2 percent of these lands provide most of the revenues for the operation of the Schools. The remaining 98 percent of the lands are used for agriculture, conservation, and watershed.

I am here today to testify in support of S. 1183 sponsored by Senators Matsunaga, Long, Bentsen, Durenberger, Grassley and Moynihan.

S. 1183 would amend the Internal Revenue Code to permit tax-exempt educational organizations to borrow money for the purpose of acquiring or improving real property without having to pay the tax on unrelated business income on income derived from real property. Under present law if a tax-exempt educational organization invests in debt-financed property, all or a portion of the income derived from such property is subject to the tax on unrelated business income.

The provision of law (§514(c)) requiring the taxation of such income was originally enacted in 1950. It was broadened by the Tax Reform Act of 1969. Both the original legislation as well as the 1969 amendments were designed to discourage certain abuses of tax-exempt status. Specifically, the 1969 legislation was intended to prevent sham transactions in which taxable organizations sold assets to a tax-exempt organization at an inflated price and then leased the assets back to the seller. The earnings of the business were used by the seller to meet scheduled rental payments. The tax-exempt organization then returned these funds to the seller as payment for the assets "purchased." In this way, the seller (1) deducted the rental payments as a business expense and (2) upon receipt of purchase payments from the tax-exempt organization, treated them as capital gain. This type of arrangement permitted a taxable corporation to convert ordinary income into capital gain and permitted the tax-exempt organization to eventually acquire assets without any out-of-pocket cost.

S. 1183 contains a number of precisely worded safeguards to prevent the pre-1969 abuses from recurring. S. 1183 would permit tax-exempt educational organizations, if the safeguard requirements are complied with, to finance real property acquisitions and improvements without being subject to the tax on unrelated business income on passive rental income derived from real property.

Today, more than ever before, many educational organizations are facing a tremendous shortage of funds. This is a result of many factors, not the least of which are the state of our economy and the cutback of many Federal programs. S. 1183 provides a means whereby tax-exempt educational organizations can attempt to meet their own funding needs while still providing protection against the abuses which have occurred in the past.

In considering this legislation, it is important to note that the holding and improvement of real estate for the purpose of deriving rental income is not considered an unrelated trade or business for tax-exempt educational organizations.

Rental income is generally not taxable as unrelated business income for organizations which are exempt from tax under section 501(c)(3)of the Code. The major exception to this rule is for real property financed through borrowing. Apparently, the concern is not with the ownership of real estate, per se, but with potential abuses that may occur when property is financed through borrowing. S. 1183 provides safeguards to avoid past abuses. It also permits debt financing for real property acquisitions and improvements which are otherwise acceptable activities. I respectfully submit that S. 1183 strikes the necessary balance between the need of educational organizations to finance their legitimate activities, and the need of the public to be protected against abusive use of the tax laws.

It should also be noted that this legislation will promote more balanced investment portfolios for tax-exempt educational organizations. We are all aware that prudent investment calls for diversification of an investment portfolio. This is especially true for fiduciaries of tax-exempt organizations. An important element in any diversified portfolio is investment in real estate. However, current law severely restricts investment in real estate by tax-exempt educational organizations. Such investments require a very substantial proportion of assets to be committed to real estate. If money is borrowed, the return on investment is decreased because a portion of the rents received will become taxable as unrelated business income. Enactment of

S. 1183 would correct this problem. It would permit tax-exempt educational organizations to invest a prudent portion of their portfolio in productive real estate investments.

In the case of the Kamehameha Schools the potential imposition of this tax impedes our effort to fund a broad range of educational services to the children of Hawaii. We simply must defer or not undertake many important programs because our income cannot be increased quickly enough through more rapid development of our income producing properties. We are unable to totally finance all of the development projects we could be undertaking to generate the income needed for the expansion of our educational programs without debt financing as permitted under S. 1183.

Lastly, I would note that in Public Law 96-605, enacted in 1980, qualified retirement trusts were provided with the opportunity to invest in debt-financed property without being subject to the tax on unrelated business income on income derived from real property. The safeguards contained in S. 1183 are identical to the safeguards applicable to qualified retirement trusts.

In conclusion, I urge the Senate Finance Committee to act favorably on S. 1183 to permit tax-exempt educational organizations to better provide educational opportunities to our nation's young people.

Senator PACKWOOD. Thank you.

Mr. Farrell, let me address a question to you from Senator Grassley, although all three of you could answer if you wanted.

Treasury has once again opposed S. 1183 on the grounds that granting exemption from the unrelated business income tax for leveraged real estate investments will cause a host of abuses.

What are your views of this criticism? Can we make any changes in this legislation to address that criticism without sacrificing the purpose of the bill?

Mr. FARRELL. I suppose I would make two responses to that question. First of all, I do believe the bill, as currently written, would prevent the original abuse for which the current legislation exists. Now, in addition to that, Treasury is concerned about many other possibilities which have been mentioned today, and there are people sitting at the table who could perhaps better comment on that issue than I can. But many of the possibilities that they suggested, many of the arrangements that they discussed would be of no interest at all to our institutions. We are not engaged in, or interested in being engaged in, complex partnerships with taxable bodies, or individuals. We simply want to be able to invest in debt-ridden real estate as an alternative, a very simple course of action.

Perhaps some of the other people here would have some further thoughts.

Senator PACKWOOD. I would welcome any other differing comments.

Mr. STORRS. Sir, could I just comment that if there is an abuse potential, we have got $700 billion of abuse potential right now, and we are talking about $30 billion.

Senator PACKWOOD. I was struck by the potential abuse now in the pension funds; I believe it is 95 percent.

Mr. STORRS. Yes, sir.

Senator PACKWOOD. If you abused all that you have got, it is not much.

Mr. STORRS. Yes, sir. If there is any abuse, Mr. Chairman.

Senator PACKWOOD. I understand.

Sparky.

Senator MATSUNAGA. Thank you, Mr. Chairman.

Now, any member of the panel, what would you estimate the revenue implications to be if S. 1183 should pass?

Mr. RUDNEY. Mr. Senator, we have made in our study an estimate of the revenue impact, and it is minimal—minimal in this sense, that at the time of the 1980 legislation with respect to pension trusts, the estimate at that time, the Treasury estimate, was $10 billion. Comparing——

Senator PACKWOOD. $10 billion?

Mr. RUDNEY. $10 billion—million, million, million. A very nominal amount for even that size group which is, as pointed out——

Senator PACKWOOD. In our budget process, an asterisk indicates $100 million or less. This would not even rise to the dignity of a dot.

Mr. RUDNEY. That is right. So if pension trusts are 20 times as large as university endowments, our judgment is that the revenue loss would be about one-half a million dollars.

Senator MATSUNAGA. The Treasury has conceded that educational institutions are at a disadvantage vis-a-vis the pension trusts under the unrelated business income rule. Would you elaborate further, any of you, on the disadvantage currently shouldered by educational institutions? Anyone?

Mr. TAKABUKI. Senator, if you are saying by that that the pension funds are able to finance their real estate investments with debt, as compared to educational organizations today, which could not, except to be penalized on the basis of debt, allocation against the adjusted basis, which causes such income to be taxable to the educational organizations. In real estate, as you are well aware, the Kamehameha Schools-Bishop Estate's endowment portfolio is largely real estate because the legacy from the Princess were the lands which were given for that purpose. In our instance, the abuses that the Treasury was talking about today about the allocation of the partnership between taxable—tax-exempt and taxable entities, under those kinds of circumstances, as far as we are concerned, we are willing to limit the application merely to tax-exempt organizations, so that problem would be resolved as far as the Treasury is concerned. And, second, on the nonrecourse financing, another objection that was raised on the part of the Treasury, that is what we are primarily concerned, as you are well aware, Senator, is to have the flexibility of improving our real estate with debt; that is our ability to borrow. Because, unless we are able to do this, much of the development of the area near Kaunakakai in Honolulu could not be done.

Senator MATSUNAGA. Thank you very much. As far as I am concerned, I am fully sold. It is for the record that I have been asking some of these questions. And some criticism has been launched against this bill relative to the risks which the educational institutions would take if this bill were passed in order to gain additional income.

What are your views on this for the record?

Mr. MORRIS. Senator Matsunaga.

Senator MATSUNAGA. Yes?

Mr. MORRIS. Before some of the members of the panel address that issue, if I could go back to the last question that you asked.

Senator MATSUNAGA. You have something to add.

Mr. MORRIS. I would like to add two points for the record. As Mr. Rudney and Mr. Copeland pointed out in their study, real estate is traditionally priced on the basis of its being debt financed, so that if you have to buy property on a 100-percent equity basis, you actually are paying more for that property than someone who can purchase it on a debt-financed basis. That is the first disadvantage to an educational organization.

The second disadvantage is the fact that the taxable investor who buys real estate, during the early years of holding that real estate, will be entitled to deductions which normally will exceed the income from the property, so that can offset other taxable income. An educational organization does not get any of those benefits. Therefore, it actually costs an educational organization more money to purchase the property and to hold the property than it does a taxable investor. And the only thing that makes real estate an attractive investment for a tax-exempt entity is the fact that there is a potential for appreciation over time, and it provides stability with respect to value and permits organizations to have more balanced investment portfolio.

Senator **Matsunaga**. Very well said.

Now, there is a vote going on on the floor now, so we will all have to be going. And, unless Mr. Copeland, who has added to the panel with a golden silence, I will call for a recess.

Do you have anything to add, Mr. Copeland?

Mr. **Copeland**. No, Senator. I think everything I had to say has been said.

[The prepared statements of Gabriel Rudney and John Copeland follow:]

TOWARD REMOVAL OF THE PENALTY TAX ON DEBT-FINANCED REAL ESTATE INVESTMENT BY EDUCATIONAL INSTITUTIONS

by

Gabriel Rudney and John Copeland, Consultants*

December 3, 1982

*Formerly Treasury economists in the Office of Tax Policy. Mr. Rudney is now Senior Research Associate of Yale's Institution for Social and Policy Studies (Program on Non-Profit Organizations)

Executive Summary

S. 2498/H.R. 6353 would permit schools exempt from income tax to also be exempt from the tax on unrelated business income earned from real estate investments financed with borrowed funds. Currently, a part of the net income from any investment so financed is subject to corporate income tax according to a prescribed formula.

Enactment of S. 2498/H.R. 6353 would enable educational institutions to diversify their investment portfolios and provide a greater hedge against inflation through investment in real estate. This type investment would enhance the cultural and economic benefits to society which arise from educational activities, and would bring additional funds to the real estate market at a time when the infusion of additional capital may be critical to the vitality of the real estate market.

The exemption proposed in S. 2498/H.R. 6353 is the same as that granted in 1980 by P.L. 96-605 to pension and profit sharing trusts.

Objections to S. 2498/H.R. 6353 have been fourfold:

1) Exemption would give educational institutions a financial advantage over taxable organizations as well as other exempt organizations;

2) Exemption would permit return of the abuses which the tax on unrelated business income was enacted to prevent;
3) Additional income accruing to educational organizations would be accumulated and thus escape the stream of taxable income; and
4) Revenue loss would be substantial.

Such objections are not warranted based on an analysis of available evidence.

1) S. 2498/H.R. 6353 would create no financial advantage. The proposed exemption would merely grant educational institutions the same tax status as pension trusts which are 20 times as important in terms of asset-holdings. It would also ameliorate part of the existing bias in favor of taxable investors who can structure real estate investments to be nontaxable and to generate deductions in excess of costs which can offset tax on other income. Also, after several years of losses the property can then be sold by the taxable investor without ever being effectively taxed on the income.

2) S. 2498/H.R. 6353 would provide appropriate safeguards. The 1980 pension trust legislation provided safeguards by specifically denying tax exemption to transactions arranged to enable the seller to obtain part of the

future profits from the property or the purchaser to bypass the limits on deductions for contributions to a pension fund. To date these safeguards have worked. S. 2498/H.R. 6353 would retain these safeguards with respect to real property investments of educational institutions.

3) Exempting the income received from debt-financed real estate by the endowments of educational institutions would result in earlier taxation of that income than in the case of pension trusts. Ninety percent of the endowment income of educational institutions is spent in the year received for goods and services. About 70-80 percent is spent on faculty and employee compensation because education is a labor intensive industry. These amounts become immediately taxable to the recipients. By contrast, assets and income of pension trusts may be accumulated over the 30-40 year working life of recipients before any distribution occurs and no tax is imposed until such funds are actually distributed.

4) The revenue loss, if any, will be minimal. Funds of educational institutions are currently earning tax-exempt income, so that only the net return on the debt can be considered as exempted from tax. The Treasury currently derives very little revenue from debt

> financed income earned by educational institutions because of minimal debt financed investment by such entities. Exemption of this debt-finance income would merely be an alternative to having it earned tax-free by pension trusts or by a taxable entity which reported losses from the property during the first few years of ownership.

The financial squeeze on educational institutions, particularly private institutions, requires opening up real estate as an alternative for their endowment investments. Real estate has provided a greater total return in the last decade than stocks and bonds. Educational institutions have invested little in real estate because the taxation of debt-financed investments generally reduces the net return on the equity below that available if no debt were used. It has also caused them to alter their investment strategies. Unlike stock and bond prices, where debt-financed purchases are not widespread, real estate prices reflect the fact that leverage is customary in real estate purchases. Since many investors, including the financially gigantic pension trusts, can earn income from leveraged real estate free of tax, educational institutions cannot pay competitive prices for debt financed real estate while paying the tax on unrelated business income therefrom. Endowment investment in effect has been limited to stocks and bonds.

I. Why should the penalty tax on debt-financed real estate investment be removed for educational organizations?

The financial welfare of one of the nation's most important industries, education, is encumbered by the restriction on its investment strategy. About 3,000 private and public universities and colleges spent about $64 billion in 1981 to provide educational services to about 11 million students. Many of these institutions also provide important research and other services to government and to business. In addition, over 16,000 private elementary and secondary schools spent about $34 billion in 1981 to provide educational services to over 5 million students.1/

The nation benefits from the productivity of education. Not only do educated individuals derive pecuniary and nonpecuniary benefits, but society generally benefits socially, culturally, and politically from an educated population. But most importantly, education makes an important economic contribution by promoting productivity and growth. Expenditures on education are viewed as human investment which generates greater efficiency in the use of labor, capital, and land and thus yields a return in faster growth of national income. One

---

1/ See Statistical Abstract of the United States, 1981, Tables 214, 217, 221 (pages 132, 134, and 137) and Appendix Table 1.

estimate by an authority in the field is that 23 percent of the increase in national income is attributable to the increase in the quality of work promoted by education.[2]

Higher education and private elementary and secondary education, however, are in a financial crisis. Inflation and student aid requirements have increased operating costs, but social and political constraints limit the oportunity to match rising costs with higher tuition and fees which would be the case if education operated in the normal market place. These constraints are in effect even under good economic conditions. Juanita Kreps, former Secretary of Commerce and now Vice President Emeritus of Duke University has explained that "reluctance to transmit cost increases to the student even in a period of rising income reflects a belief that education should be subsidized if not free and that the return to the society justifies the social expenditure."[3]

To make up the shortfall between price and cost, higher education has two subsidy sources, that is, two ways by which people contribute to the education of others. One subsidy is financed by compulsory contributions (taxation) and the other by voluntary contributions (donations and endowment income).

2/ Edward F. Denison, The Sources of Economic Growth in the United States, Committee for Economic Development, Supplement Paper No. 13 (New York 1962).

3/ Juanita Kreps, "Higher Education and the Economy" in American Council on Education, Formulating Policy in Postsecondary Education, Washington, D.C. 1970, p. 63.

Tuition levels in effect are determined by the level of these subsidies. Private elementary and secondary schools tend to have little direct government support.

Public institutions depend primarily on the tax-supported subsidy. Private institutions depend on gifts and endowment income but this subsidy has in recent decades financed a declining portion of total costs in higher education. The share of total current revenues coming from endowment earnings dropped sharply from 18 to 8 percent during the 1940s, then fell gradually but consistently to less than 5 percent in the early 1970s, and have held steady at about that level for the past decade.[4/]

One factor in slow endowment growth and poor endowment earnings is the limitation on investment outlets. Even though there has been a strategy of expanding investment in stocks to overcome inflationary pressure on costs, such investment is risky. Fortune Magazine reported in May 1974 (page 230) that the total return to investors (including ordinary income and capital appreciation) for one year in the stocks of the 500 largest U.S. corporations was negative for 385 and the

---

4/ Susan C. Nelson, "Financial Trends and Issues" in Public Policy and Private Education, edited by David Breneman and Chester Finn, Jr., Brookings Institution, Washington, D.C., 1978, pp. 69-70 and Appendix Table 1.

median total return was a negative 25.5 percent. Moreover, bonds have not proven to be an attractive investment vehicle over the last decade. (See Appendix Table 5). It is therefore essential for endowments to have the flexibility of real estate investment as an option for greater diversification and yield.

Private institutions cannot be wholly independent of government support. The restriction on investment opportunities in real estate deprives private institutions of an important and strategic investment. By doing so, the restriction not only puts more tax burden on the public to meet the unfinanced cost of higher education, but it also encourages increasing government support and creates concern about public control and attendant constraints on diversity and pluralism and the attainment of quality education.

Certainly, if the level of nontuition revenues are guaranteed by government support with tax monies, it should be the government's obligation to assure the strength of income when government budget deficits limit continuing government support.[5] The growing probability of declining government support alters the financial balance between current income and costs for many institutions. They must plug the financial gap by seeking funds elsewhere. Pressures are increased to raise tuition, to seek more gifts, to explore more productive investments. In the case of endowment income, the adversity of Federal cutbacks is twofold. Not only is higher education faced with less government support but its ability to utilize productive investment strategies which are available to others is significantly restricted by the penalty tax on real estate investment.

---

[5] Federal funds grew from virtually nothing in the 1930s to nearly one-fourth of total income in 1965-1966, and then declined and held steady at 18-20 percent for the past decade. Nelson, Op. cit., p. 72 and Table 2.1. See Appendix Table 2.

II. How widespread is the impact of the debt-financed real estate investment restriction on higher education?

The restriction on debt-financed real estate investment has wide geographical impact and goes far beyond the encumberance of a few universities with large endowments. Tabulations in the 1982 Money Market Directory list 439 endowments, mostly universities and colleges, located in almost all of the 50 states and the District of Columbia. Of these, 227 are located in 40 metropolitan areas shown. See Appendix Table 3.

The need to expand investment opportunities of endowments affects small as well as large universities and colleges. The great majority of private colleges have endowments of less than $5 million.[6]

Moreover, the restrictions prevent literally hundreds of local communities from benefiting from debt financed real estate development which would otherwise not be undertaken by endowed schools even if it is in the interest of the communities and the schools to engage in community development.

---

[6] National Association of Colleges and University Business Officers, Results of the 1981 NACUBO Comparative Performance Study, Washington, D.C. 1982. See Tables 51 and 52.

III. Why is real estate needed as an investment option?

Educational endowments own very little in the way of real estate. But real estate is one of the three major outlets for investment funds. Real estate and common stock are traditional shelters against inflation, although the situation can vary substantially over time. In some cases real estate is a better shelter than stocks and vice-versa. Bonds are generally the preferred outlet when prices are declining. Well-rounded investment programs therefore seek to utilize all three outlets as judgments on future price and earnings change.

Inflation has made real estate the most profitable investment over the last decade or so. One of the largest available real estate investment programs had an effective annual total rate of return of 12.2 percent for an investment entered on August 1, 1970, and held through July 31, 1981.[7] By comparison, the annual rate of return was 8.0% for common stocks and 3.5% for long-term bonds during this same period. (See Appendix Table 5). Because of the relatively poor price performance of stocks and bonds during this period (see Appendix Tables 4 and 5), the real value of endowments of educational institutions did not change over the last half of the 1970's even though the nominal value increased by 45 percent (see Appendix Table 6). And between 1973 and 1981 the real value of the endowments declined by 24 or 31 percent, depending on the price deflator used (Appendix Table 7).

---

[7] Prudential Insurance Company of American, PRISA 1981 Annual Report, p. 12. See Appendix Table 5.

Yet investment return is not the only reason to remove the tax from debt financed real estate investments. The fact that present law penalizes an investment in debt financed real estate makes it difficult for an educational institution to justify taking on debt to acquire or develop real estate when there is an objective over and beyond the maximum current income. For instance, a college or university may own vacant or agricultural land, perhaps received as a bequest, that could be developed to enhance its gross return with a consequent beneficial result to the community in enhanced employment and tax revenue. However, taking on the necessary debt to carry out the development would lower the net return below that which can be obtained from investments not carried with debt.[8] As a result, the development is not carried out, or at least is considerably delayed.

Acquisitions for necessary planned development of real estate by a college, university or private school can also be limited by the tax laws. An institution may want to help improve its neighborhood by upgrading the real estate but could only do so by taking on debt. However, to carry the property would require debt-financing and rental of property. In both cases, the

---

8/ See, for instance, the testimony of W. J. Farrell of the University of Iowa and M. Takabuki of the Kamehameha Schools before the Subcommittee on Taxation and Debt Management of the Senate Comittee on Finance, July 19, 1982.

return after tax can be such that the investment is noncompetitive with stocks and bonds owned outright.

IV. Does the penalty tax discourage real estate investment?[9]

The penalty tax generally discourages real estate as an investment by tax-exempt entities because the cash flow return on equity invested in a leveraged real estate investment often is less than for a 100 percent equity investment. The following table illustrates why a debt-financed real estate investment can be unattractive vis-a-vis one with 100 percent equity funding.

The table below is based on the following:

(1) Cost of property is $100.

(2) Interest rate on mortgage indebtedness is 15%.

(3) During period covered, there is no reduction in mortgage indebtedness.

(4) Depreciation is based on 75% of the cost of the property.

(5) Depreciation, for tax purposes, is based on a 15 year useful life, using the straight line method ($5/yr.).

(6) Rental income from the property is $16.

(7) Assumed income tax rate is 46%.

---

[9] Holding stocks and bonds on margin also is discouraged by the taxation of the dividends and interest therefrom in the same manner as income from leveraged real estate.

Return before tax on unrelated Business Income

	100% Equity Financing	50% Mortgage Indebtedness	60% Mortgage Indebtedness
Rental income	16.00	16.00	16.00
Interest on debt	-0-	7.50	9.00
Cash flow after interest	16.00	8.50	7.00
Percent return on equity	16.0%	17.0%	17.5%

Percent return on equity after interest and tax on unrelated business income

	100% Equity Financing	50% Mortgage Indebtedness	60% Mortgage Indebtedness
Year 1	16.0%	15.35%	16.08%
Year 2	16.0	15.26	16.01
Year 5	16.0	14.92	15.72
Year 7	16.0	14.62	15.46
Year 8	16.0	14.42	15.42
Year 10	16.0	13.96	15.20

The above table shows that a 16 percent return on a 100 percent equity investment surpasses the return on equity if leverage of 50 or 60 percent is used (with very minor exceptions). In the first year of ownership, with a mortgage equal to 50 percent of the cost of the property, the return on equity is only 15.35 percent. As the investment ages, the return on equity decreases as the proportion of income subject to tax increases. This occurs because the ratio of debt to adjusted basis of the property (the method used under the formula for determining taxable income) increases.[10] With 50 percent indebtedness, the return on equity in the 10th year of ownership drops to 13.96 percent.

Accordingly, a financial officer for an exempt educational organization will not invest in debt financed real estate if he finds that his net return on equity is expected to be less than on a 100 percent equity investment. As shown in the table above, this disadvantage grows the longer the property is held.[11]

---

[10] Percentage of income and expenses (interest and depreciation) used for income tax computation under Section 514(c) of the Internal Revenue Code.

	50% Mortgage Indebtedness	60% Mortgage Indebtedness
Year 1	51.3%	61.5%
Year 2	54.1	64.9
Year 5	64.5	77.4
Year 7	74.1	88.9
Year 8	80.0	96.0
Year 10	95.2	100.0

When the ratio exceeds 100 percent, taxable income is all income less all expenses.

[11] It is noteworthy that with risky high debt financing (70 to 80% or more), it is possible to achieve a greater net return on debt financed real estate than on a 100 percent equity investment. Appendix Table 8 indicates that with 80 percent indebtedness, a 20 percent return can be obtained versus 16 percent on 100 percent equity. But that return is deceptive. To offset the effect of the tax requires moving into a riskier environment. One must recognize that leverage operates on the downside as well as the upside. High per-

(footnote continued on following page)

In addition to a lower rate of return, there is another aspect of the penalty tax that discourages debt financed real estate investment. This is the tax-offset that is available to taxable individuals or partnership investors. Many real estate investments result in losses for tax purposes in the first few years of ownership because interest, allowable depreciation, and other expenses exceed rental income. A taxable individual or partner in the 50 percent bracket can use his proportionate losses to offset tax on other income. When this is done, the actual net cash flow from the investment plus the tax saving can make an investment quite profitable for the investor. An example of this result is shown in Appendix Table 8. Here an individual in the 50 percent bracket with an 80 percent leveraged real estate investment can earn 22.5 percent on his equity during the 15 years of straight line depreciation. By way of contrast, a tax exempt organization could earn only 20 percent on a similar investment (even though

---

__/ (footnote continued from previous page)

centage debt financing increases pressure on equity should the investment not work out as planned. For instance, a key store in a shopping center failing to renew its lease can serve to reduce customer traffic enough to harm the whole enterprise. And if the mortgage has to continue to be serviced, the return on equity can be radically reduced. Risks in real estate obviously force a prudent investment officer to require a greater potential return from a real estate investment, especially a leveraged one, than a Treasury bond or a triple A corporate bond. Consequently, a tax on highly leveraged real estate investment tilts the investment flow towards greater equity real estate funding or investment in securities.

non-taxable), if, as is likely, it has no other taxable income against which to offset any losses.[12]

The penalty tax also discourages debt financed investment because it distorts investment decisions related to the pricing of real estate. When the educational institution investment officer cannot offset a tax loss against other taxable income, he cannot compete in the marketplace for real estate on a par with taxable investors. Either he has to meet the competitive price and take a lower return on the real estate investment or he must shift endowment funds to stocks and bonds where the use of leverage and an allowance for depreciation do not influence the prices and rates of return.

V. Would the exemption from the penalty tax on debt-financed real estate provide educational institutions with a financial advantage over other exempt organizations?

The answer to this question is obviously no because of the overwhelming size of the pension trust sector vis-a-vis educational institutions. With the passage of Public Law 96-605 which exempts pension and profit sharing trusts from the tax on unrelated business income from leveraged real estate investments, the trusts were given an advantage not available to others exempt under section 501 of the Code, including educational institutions. Since the assets of pension and profit-sharing funds were $423 billion at the end of 1980 (Appendix Table 9), while the endowments of institutions of higher education were only $21 billion,[13] the financial strength and advantages of pension trusts are overwhelming. Exempt endowment funds owned by other than educational institutions also are of minor magnitude compared to pension trust assets (See Section XI).

---

[12] In this case interest and depreciation exceed the total rental income. See Appendix Table 8.

VI. Would removal of the penalty tax provide educational institutions with a financial advantagee to accumulate funds?

When debt financed investment income of exempt organizations became taxable under the Revenue Act of 1950 and the Tax Reform Act of 1969, one reason for taxation was to prevent market distortion that may occur because of the ability of a tax-exempt investor to expand investment faster than a taxable investor, if the former chooses to expand from retained earnings. Alternatively, the tax-exempt organization could choose to pay a higher price for an investment asset than a taxable investor but still obtain a satisfactory rate of return because of the absence of income tax.

---

[13] U.S. Department of Education, *The Condition of Education, 1982 Edition*, Washington, D.C., no date, Table 4.13, p. 150.

The situation has changed somewhat in recent years. The deductions that have become available for investments in varied types of real estate, including the accelerated cost recovery system enacted in 1981, have made it possible for real estate investors to report losses for income tax purposes during the initial 5 to 7 years of ownership. These losses can be set-off against other income. Since educational institutions are unlikely to have other taxable income against which to offset losses from real estate investments, they would have no advantage in accumulating income from leveraged real estate during the period when expenses, including depreciation, exceed income. In fact, during this period they have a lower rate of return after taxes. At the point when income from depreciable real property becomes taxable for taxable entities, the strategy is generally to sell the property and pay the capital gains tax.

In the case of a tax exempt entity which holds property subject to an outstanding mortgage, only a portion of the deductions allowable can be taken into account in computing income subject to tax, whereas a taxable entity is allowed the full deduction. Consequently, the exempt entity will have waisted a portion of the attractive benefits of depreciation and yet will pay precisely the same capital gains tax on the same gain as the taxable entity.

When Public Law 96-505 reintroduced income tax exemption for debt financed real property owned by pension or profit sharing plans, the legislation was supported as being a valid enhancement of the function for which the trusts were granted exemption -- i.e., "to accumulate funds to satisfy their exempt purpose -- the payment of employee benefits."[14/] The legislation thus implies that existing exemption for passive investment income of educational institutions is not intended to foster accumulation for future outlays. In addition the legislation implies that permitting receipt of tax-free income from leveraged real estate investments by educational institutions results in accumulations not satisfying their exempt purposes, but merely enhancing their ability to accumulate funds. This is not true.

In actual practice, accumulation is not the objective of educational endowment funds. Income is desired for its availability to meet current expenditures. A survey for fiscal year 1981 of institutions of higher education showed that "the average institution added back to principal 10.3% of interest, dividends, rent and other similar yields."[15/]

14/ Senate Report No. 96-1036, p. 29.

15/ NACUBO, Op. cit., p. 55.

VII. Would removal of the penalty tax still maintain safeguards against abuse?

The tax on unrelated business income from leveraged investment was enacted because tax-exempt organizations had been passing on part of the benefits of the tax exemption to the owners of property and businesses who sold their assets to tax-exempt institutions. When the Congress in 1980 reintroduced exemption for leveraged real estate investments by pension trusts, it added restrictions to the exemption designed to prevent the abuses which had grown up before enactment of the Tax Reform Act of 1969. The law provided that exemption from the penalty tax for income from debt-financed real property will not apply if --

1. The purchase price is not a fixed amount determined as of the date of acquisition;
2. The purchase price (or the amount or timing of any payment) is dependent, in whole or in part, upon the future revenue, income, or profits derived from the property;
3. The property is leased to the transferor (or a party related to the transferor);
4. The property is acquired from or leased to, certain persons who are "disqualified persons" with respect to the pension trust; or

5. The debt is a non-recourse debt owed to the transferor (or a related aprty) which either:

a. is subordinate to any other indebtedness secured by the property, or

b. bears a rate of interest significantly less than that which would apply if the financing had been obtained from a third party.

All of the applicable restrictions are incorporated in S. 2498/H.R. 6353.[16] The restrictions pertinent to educational organizations are addressed to the abuses of the exemption that involve arrangements by the seller of the property with the exempt organization to enhance the sales price (and thus increase the size of the capital gain) by leasebacks, non-recourse loans at below-market interest rates, and variable payout arrangements (which translate into a variable selling price).

It has been suggested that one potential abuse not covered by S. 2498/H.R. 6353 arises when a partnership is formed consisting of both tax-exempt educational organizations and taxable entities. Abuse of the exemption could take the form of a contract which allocates the cash flow from the real estate to the educational organizationa and the tax deductions to the

---

16/ The criticism has been made that the current law restrictions are so broadly worded as to prevent transactions between independent buyers and sellers that do not constitute abuse of the exemption. See, R.D. Howard and N.G. Blumenfeld, The Journal of Taxation, June 1982.

taxable partner. It may be appropriate to incorporate the requisite restrictions as part of S. 2498/H.R. 6353 to preclude such partnership allocations by pension trusts as well as educational organizations.

VIII. Are endowment earnings ultimately taxable?

It is noteworthy that the elimination of the penalty tax on income from debt-financed real estate held by pension trusts was justified in the Congress and the Executive on the grounds that the exemption of the income was only deferred and that ultimately pension beneficiaries become taxable on such income. The Congressional reports assert that this is not the case with respect to other exempt organizations. The Senate report states that "The investment assets of other organizations under Code Section 501(a) are not likely to be used for the purpose of providing benefits taxable at individual rates."[17] The fact is that higher education endowment income becomes taxable much sooner than pension trust income. Whereas much of endowment income is paid out within a year to taxable recipients, pension trust income is accumulated for employees over their work life (30-40 years) and it is only after the end of the work career that benefit proceeds which represent the pension trust earnings become taxable. In fact, it is currently estimateed that the government will lose $28.6 billion in 1983 because of the tax deferral for private pension plan contributions and earnings.[18] This loss will continue to grow each year reaching nearly $50 billion by 1987. It is noteworthy that the value of the assets of pension funds have been expanding at a rapid pace (the increase between 1970 and 1980 was $285 billion or over 200 percent (Appendix Table 9) which in effect is removed from the tax base.

---

[17] Senate Report No. 96-1306, p. 29.

Endowment earnings of educational institutions become immediately taxable, not as income of the institution but as income to employees and sellers of goods and services to the institutions. Much of the annual endowment earnings is used to pay current costs. The National Association of College and University Business Officers (NACUBO) reports that the distributions from endowment used to meet current expenditures in 1981 was 89.7 percent of the dividends, interest, rents and other yields.[19] This amounts to $1.2 billion based on 1981 endowment income of $1.4 billion. About 70-80 percent of the operating budgets of educational organizations is for faculty and other employee compensation and the remainder goes for energy costs, maintenance, etc.[20]

18/ CBO, Tax Expenditure Estimates, Appendix A, Fiscal years 1982-1987, released November 29, 1982.

19/ NACUBO, Op. Cit., p. 55.

20/ From unpublished study by Hans Jenny, Wooster College, Ohio.

IX. Would there be a revenue loss by not imposing a penalty tax on debt-financed real estate investments?

The answer is little or no revenue loss. The endowment funds of educational institutions are equivalent to only about 5 percent of the assets of pension and profit sharing trusts. Any revenue loss attributable to exempting income from debt-financed real property owned by the former can only be a small fraction of the loss resulting from granting the exemption to pension trusts by the 1980 legislation. The Senate report on the 1980 legislation stated that the immediate effect would be a revenue loss of $10 million, but it could be large in the future.[21/] At 5 percent of the pension trust figure, the education endowment revenue loss estimate would be only $500,000 as compared to the $10 million mentioned.

But there is ample reason to believe that any revenue loss would be minimal because of the measurement of income from real estate for Federal income tax purposes. The 15-year useful life standard for measuring depreciation of real estate is generous and, when combined with the interest deduction, shelters for several years after the initial purchase income from real estate financed with a mortgage when owned by a taxable entity. As an example, Appendix Table 10 shows a

---

[21/] Senate Report No. 96-1036, p. 31.

proposed real estate partnership which expects to have losses for tax purposes for 6 years.

Thus, exemption, if ownership is by a pension trust or educational endowment, which would not make the investment except for the exemption, must be considered as a substitute for the situation of a similar investment by a taxable entity. After some time the real estate investment would create taxable income for a taxable owner, so exemption for a section 501 organization could be considered as causing a revenue loss from that point in time forward until the mortgage was paid off. However, if the objective of the taxable investor is to keep his after-tax income reasonably close to the maximum, the taxable investor has the economic encouragement to sell before the 10th year and begin the depreciation process once again. This occurs as the deductible interest factor in a level payment mortgage declines and the non-deductible principal repayment increases. This practice, therefore, limits the extent of revenue loss that could arise from substitution of an exempt trust or fund for ownership by a taxable entity.

Moreover, educational endowments now do not pay any tax (or practically none) on real estate investments simply because it is uneconomic to invest in leveraged real estate because of the penalty tax. Only 2.2 percent of educational endowments at the end of fiscal 1981 were in real estate investment.[22] Accordingly, equity investment in leveraged real estate, if the penalty tax were lifted, would almost entirely represent a shift of funds from investments in stocks and bonds, the income from which is now tax-free, because the tax law makes it uneconomic to carry the stocks and bonds on margin.

X. Why not remove the penalty tax on debt-financed investment in outlets rather than real estate?

The great majority (nearly 82 percent) of college endowment funds are invested in stocks and bonds.[23] Income from these securities (and other personal property) also is subject to the unrelated business income tax if debt-financed. While such taxation reduces the net rate of return on equity invested in stocks and bonds carried with debt financing, S. 2498/H.R. 6353 does not provide exemption and we do not recommend that exemption be granted to such investments.

Investment practices are quite different for stocks and bonds. Large holders of stocks and bonds, such as mutual funds, pension trusts and insurance companies, typically own such securities outright. Margin debt on stocks and related equity instruments (essentially convertible bonds) advanced by broker-dealers at the end of August 1982 was only $11.4 billion.[24] While brokers do not represent the only source for borrowing on stocks and bonds, this lending does provide some indication of the relatively small size of such lending relative to mortgage lending.

---

[22] NACUBO, Op. cit., Table 17, p. 23.

[23] NACUBO, Op. cit., p. 25.

Real estate investments are typically financed initially by debt, often 50 percent or more of the cost. In some cases, the property can only be purchased by the buyer assuming an existing mortgage. The amount of mortgages outstanding at the end of June 1982 on multifamily homes and commercial real estate was $435 billion.[25]

Because of the absence of the leverage factor in the pricing of stocks and bonds purchased for investment portfolios, educational institutions can make their purchases on a full equity basis and obtain a net return that is comparable to that obtained by other investors in stocks and bonds. By way of contrast, to match the price for real estate which taxable entities are willing to pay, an educational endowment must be willing to accept a lower net return on the real estate than the other purchasers. This occurs because real estate is priced to reflect the fact that it is customarily acquired with substantial indebtedness. The value of this advantage is realized by the seller through a higher sales price than would otherwise be the case (i.e., this beneit is capitalized by the seller). Thus, a tax exempt entity, competing in the market place for real property, must accept the capitalized price despite the lower rate of return and its inability to absorb the full benefits of debt-financing (i.e., full deduction of interest, taxes, depreciation, etc. for tax purposes). Thus, tax exempt entities must be willing to take a lesser return on debt-financed real estate than can be obtained from stocks and bonds carried without debt.

---

[24] Board of Governors of the Federal Reserve System, Federal Reserve Bulletin, October 1982, p. A42.

[25] Ibid, p. A41.

XI. What would be the revenue loss if extended to other charitable and religious organizations?

Since charitable, religious, and educational organizations ordinarily are viewed as a group, it is only logical to consider the possibility of extending the exemption proposed by S. 2498/ H.R. 6353 to these other institutions. No attempt to rank the social benefits from the three categories is warranted. If the other 501(c)(3) institutions feel that exemption of income from debt-financed real estate investment would be useful to them, it should not be considered adverse to the educational institutions request. However, because of problems associated with the operations of private foundations which were addressed by the Tax Reform Act of 1969, separate review of these organizations is warranted.

Exemption of income from debt financed real estate for all section 501(c)(3) organizations would add very little to the possible revenue loss from exemption just for educational institutions. Appendix Table 11 indicates that, exclusive of religious and educational institutions, endowment funds are only about $40 billion, and of this nearly $35 billion is held by private foundations.

Conclusion

In summary, because of governmnt budget stringency in times of inflation and recession, and the pursuit of other pressing national and international problems, government support of private education is waning. Federal funding of higher education is declining in real terms. Within this federal-private partnership in higher education it is surely appropriate to lift the penalty tax on debt-financed real estate investment and afford higher education the opportunity to increase its contribution to educational financing at little or no cost to the Federal fisc.

Given the social and economic benefits that private educational institutions provide, they should not be limited in their investment strategies by tax penalties that have long lost their rationale and have been supplanted by more direct and adequate safeguards that prevent abuse, i.e., recently enacted in the case of pension trusts. S. 2498/H.R. 6535 simply extends these rules to tax exempt educational institutions with little or no revenue loss to the Treasury.

Appendix Table 1

Total current-fund revenues and expenditures, and endowment income, of institutions of higher education 1969-1970 to 1980-1981
($ millions)

	1969-1970	1970-1971	1971-1972	1972-1973	1973-1974	1974-1975	1975-1976	1976-1977	1977-1978	1978-1979	1979-1980	1980-1981 1/
						Current fund revenue						
All Institutions	$21,515	$23,879	$26,234	$28,606	$31,712	$35,687	$39,703	$43,437	$47,034	$51,838	$58,520	$65,585
Public	13,769	15,527	17,080	18,785	21,206	24,005	26,835	29,255	31,545	34,527	38,824	43,196
Private	7,747	8,352	9,154	9,821	10,506	11,682	12,868	14,181	15,489	17,310	19,691	22,289
						Endowment income (earnings)						
All Institutions	$ 447	$ 471	$ 481	$ 515	$ 577	$ 718	$ 687	$ 765	$ 802	$ 985	$ 1,177	$ 1,364
Public	57	55	55	65	77	107	97	98	129	154	191	215
Private	390	415	426	450	500	611	590	666	703	832	986	1,150
						Current fund expenditures and mandatory transfers 2/						
All Institutions	$21,043	$23,375	$25,560	$27,956	$30,714	$35,058	$38,903	$42,600	$45,971	$50,721	$56,914	$64,053
Public	14,250	14,996	16,484	18,204	20,336	23,490	26,184	28,635	30,725	33,733	37,768	42,280
Private	7,794	8,379	9,075	9,752	10,377	11,568	12,719	13,965	15,246	16,988	19,146	21,773

December 3, 1982

Source: U.S. Department of Education, Digest of Education Statistics, Washington, D.C. various years.

1/ Unpublished.

2/ Does not include mandatory transfers prior to 1974-1975.

Appendix Table 2

Total current fund revenues, and revenues from the Federal government and endowments, institutions of higher education, 1970, 1975, 1980, 1981
($millions)

	1967 - 1970		1974 - 1975		1979 - 1980		1980 - 1981	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Total current fund revenues	$7,747	100.0%	$11,682	100.0%	$19,696	100.0%	$22,389	100.0%
Federal funds1/	1,438	18.6	2,286	19.6	3,829	19.4	4,207	18.8%
Endowment funds	390	5.0	611	5.2	968	5.0	1,150	5.2

December 3, 1982

Source: U.S. Department of Education, The Condition of Education, various years.

1/ Includes Federally-funded research and development centers.

Appendix Table 3

Endowment funds of over $2,000,000 of educational institutions, museums and hospitals by State and metropolitan areas

STATE	ENDOWMENTS #	ENDOWMENTS $ in Mil.
ALABAMA	4	71
ALASKA	—	—
ARIZONA	1	8
ARKANSAS	4	44
CALIFORNIA	21	1,844
COLORADO	4	85
CONNECTICUT	12	1,030
DELAWARE	1	131
DISTRICT OF COLUMBIA	14	363
FLORIDA	5	117
GEORGIA	8	433
HAWAII	2	21
IDAHO	1	34
ILLINOIS	17	1,862
INDIANA	16	645
IOWA	7	108
KANSAS	5	140
KENTUCKY	8	180
LOUISIANA	3	67
MAINE	4	181
MARYLAND	7	301
MASSACHUSETTS	30	8,494
MICHIGAN	12	322
MINNESOTA	8	244
MISSISSIPPI	1	5
MISSOURI	10	481
MONTANA	—	—
NEBRASKA	4	43
NEVADA	1	20
NEW HAMPSHIRE	4	283
NEW JERSEY	8	1,140
NEW MEXICO	2	40
NEW YORK	85	8,306
NORTH CAROLINA	10	354
NORTH DAKOTA	1	6
OHIO	30	850
OKLAHOMA	4	43
OREGON	5	88
PENNSYLVANIA	30	1,131
RHODE ISLAND	3	120
SOUTH CAROLINA	6	88
SOUTH DAKOTA	—	—
TENNESSEE	7	246
TEXAS	10	8,045
UTAH	1	5
VERMONT	4	108
VIRGINIA	16	487
WASHINGTON	5	88
WEST VIRGINIA	2	18
WISCONSIN	8	127
WYOMING	—	—
CANADA	2	84
TOTALS	439	$ 24,765

METROPOLITAN AREAS	1980 CENSUS RANK	ENDOWMENT #	ENDOWMENT $ in Mil.
NEW YORK	1	31	1,686
CHICAGO	3	10	902
STAMFORD	171	—	—
LOS ANGELES—LONG BEACH	2	12	647
DETROIT	5	8	100
PITTSBURGH	13	3	266
SAN FRANCISCO—OAKLAND	6	8	1,117
HOUSTON	9	3	209
ST. LOUIS	12	5	415
DALLAS—FORT WORTH	8	4	191
NEWARK	17	3	85
CLEVELAND	19	7	350
PHILADELPHIA	4	20	551
MINNEAPOLIS—ST. PAUL	15	8	225
HARTFORD	54	5	67
BOSTON	10	26	2,950
WASHINGTON, D.C.	7	12	385
CINCINNATI	27	5	180
SEATTLE—EVERETT	23	2	34
AKRON	57	3	33
ROCHESTER	39	3	654
TULSA	58	2	28
MILWAUKEE	26	2	25
ATLANTA	16	8	391
TOLEDO	51	—	—
MIAMI	21	1	35
SAN DIEGO	20	—	—
GREENSBORO—WINSTON-SALEM	48	4	97
DENVER—BOULDER	22	3	41
KANSAS CITY	29	4	123
PORTLAND	32	3	46
DAYTON	47	3	68
NASSAU—SUFFOLK COUNTY	11	3	27
PHOENIX	28	—	—
PROVIDENCE	41	4	143
BALTIMORE	14	6	263
INDIANAPOLIS	34	4	92
LOUISVILLE	43	3	44
NEW ORLEANS	31	2	55
NEW HAVEN	93	3	933
OTHERS		212	11,340
TOTALS		439	$ 24,785

Source: 1982 Money Market Directory, pp. XIII and XIV.

December 3, 1982

Appendix Table 4

Average total return1/ of college and university investment pools2/ for periods ended June 30, 1981, and comparison with other investment and inflation benchmarks

	One year	Three years	Five years	Ten years
Average total return	14.64%	12.49%	9.06%	6.45%
Change in market value	6.94			
Current yield3/	7.70			
Comparative investment indicies :				
Dow-Jones Industrial Average	19.39	12.52	5.10	5.79
Standard and Poor's 500 Index	20.36	17.12	10.01	7.19
Salomon Brothers High Grade Long-term Corporate Bond Index	-14.11	-4.05	.06	3.12
Inflation benchmarks				
Consumer Price Index	9.52	11.59	9.79	8.37
Higher Education Price Index	9.77	9.13	8.10	7.36

December 3, 1982

Source: National Association of College and University Business Officers, Results of the 1981 WACUBO Comparative Performance Study, Washington, D.C., no date Table 4, page 9.

1/ Total return is the sum of current cash payments plus any change in market value.

2/ "Investment pool" and "endowment" are not entirely synonomous. All of an institution's endowment funds may not be in its investment pool. Alternatively, other than endowment funds may be included in investment pools. Most of the investment pools as of June 30, 1981, was endowment funds, however.

3/ Assumes reinvestment of income.

Note: Based on investment pools of 209 colleges and universities. As of June 30, 1981, these pools had a market value of $17.8 billion. The estimated market value of endowments for all institutions of higher education at the end of fiscal year 1980 was $20.7 billion (U.S. Department of Education, The Condition of Education, 1982 Edition, Table 4.13, page 150.)

Appendix Table 5

Comparison of annual rate of return from investment in PRISA and representative stocks and bonds 1/, 1971-1981

Effective Annual Rates of Return (for periods from July 31, 1970 to September 30 of year shown)
For a single investment on July 31, 1970:

	Property PRISA	Common Stocks S&P 500	Long-Term Bonds Salomon Bros.	3-Month Treasury Bills	Consumer Index Price
1971	5.7%	26.0%	14.6%	4.9%	4.0%
1972	6.0	21.0	12.1	4.4	3.7
1973	6.9	14.3	10.0	5.0	3.7
1974	7.3	-1.7	4.3	5.7	6.5
1975	7.6	5.1	6.2	5.8	6.8
1976	7.7	8.8	8.4	5.7	6.6
1977	8.0	6.9	8.7	5.6	6.6
1978	8.7	7.5	7.7	5.7	6.8
1979	10.6	8.0	7.1	6.1	7.3
1980	11.8	9.2	5.1	6.6	7.9
1981	12.2	8.0	3.5	7.2	8.1

For a series of equal quarterly investments beginning July 31, 1970: 2/

	Property PRISA	Common Stocks S&P 500	Long-Term Bonds Salomon Bros.	3-Month Treasury Bills	Consumer Index Price
1971	5.0%	14.9%	10.6%	4.7%	3.7%
1972	5.9	14.7	9.0	4.1	3.4
1973	7.6	7.3	7.1	5.4	5.6
1974	8.1	-17.2	-1.5	6.4	8.2
1975	8.3	-0.4	3.6	6.3	8.1
1976	8.2	7.2	7.9	6.0	7.4
1977	8.6	4.6	8.4	5.8	7.2
1978	9.5	5.9	7.0	5.9	7.4
1979	12.0	6.9	6.2	6.4	8.1
1980	13.5	8.8	3.6	7.1	8.4
1981	13.8	7.1	1.3	8.0	9.0

December 3, 1982

Source: Prudential Insurance Company of America, PRISA 1981 Annual Report, p. 13.

Note: PRISA - Prudential Property Investment Separate Account.

1/ Investment income plus change in current value.

2/ Made only on dates on which PRISA accepted contributions.

Appendix Table 6

Market value of endowment, in current and constant - 1980 dollars, of institutions of higher education, end of fiscal years 1975 to 1980
($ millions)

Type of institutions	1975	1976	1977	1978	1979	1980	Percent change 1975 to 1980
				Current dollars			
All institutions	$14,365	$15,488	$16,304	$16,840	$18,159	$20,743	44.4%
Public	2,615	2,933	3,131	3,271	3,516	3,708	41.8
Private	11,750	12,556	13,174	13,569	14,642	17,305	45.0
				Constant 1980 dollars1/			
All institutions	$20,596	$20,829	$20,590	$19,936	$19,950	$20,743	0.7
Public	3,749	3,944	3,954	3,873	3,863	3,708	-1.1
Private	$16,847	$16,884	$16,636	$16,063	$16,087	$17,035	1.1

December 3, 1982

Source: U.S. Department of Education, The Condition of Education, 1982 Edition, Washington, D.C., no date, Table 4.13, p. 150.

1/ Computed by using the Higher Education Price Index.

Appendix Table 7

Relative change1/ in value of college and university endowment funds before and after inflation adjustment, fiscal years 1973-1981

Fiscal year, June 30	Endowment funds nominal value	Real endowment based on CPI	Real endowment based on HEPI2/
1973	100.00%	100.00%	100.00%
1974	83.30	76.49	77.48
1975	91.05	75.19	78.28
1976	98.52	75.96	79.46
1977	102.36	74.60	77.56
1978	103.79	70.82	73.67
1979	112.09	68.94	73.80
1980	122.85	66.11	73.60
1981	139.31	68.46	76.22
Percent change 1981/1978	39.31	-31.54	-23.78

December 3, 1982

Source: National Association of College and University Business Officers, Results of the 1981 NACUBO Comparative Performance Study, Washington. D.C., no date, Table 37, page 44.

1/ Change is the result of charge in market value of assets plus new gifts less distributions from current income and any distributions from capital.

2/ Higher Education Price Index.

Appendix Table 8

Cash flow before and after unrelated business income tax on an equity investment in property encumbered by varying percentages of debt

Specifications

1. Cost of property: $100
2. Cash flow before income tax on cost of property: 16 percent or $16
3. Rate of interest on debt: 15 percent
4. Depreciation: 15 years, straight line
5. No reduction of principal of debt during periods in the table
6. Unrelated business income tax rate: 46 percent

	Percent of property financed by debt				
	0	40	50	60	80
Cash flow/rate of return to an exempt organization before imposition of tax on unrelated business income					
Equity investment in property	$100.00	$60.00	$50.00	$40.00	$20.00
Interest on debt	0	6.00	7.50	9.00	12.00
Cash flow on equity after interest	16.00	10.00	8.50	7.00	4.00
Cash flow after interest as a percent of equity	16%	16.67%	17%	17.5%	20%
Cash flow/rate of return to exempt organizations after imposition of tax on unrelated business income 1/					
Cash flow on equity after interest and income tax					
Year 1	$ 16.00	$ 9.06	$ 7.67	$ 6.43	$ 4.00
Year 2	16.00	9.01	7.63	6.40	4.00
Year 5	16.00	8.81	7.46	6.29	4.00
Year 7	16.00	8.64	7.31	6.18	4.00
Year 8	16.00	8.53	7.21	6.12	4.00
Year 10	16.00	8.25	6.98	6.08	4.00
Cash flow after interest and income tax as a percent of equity					
Year 1	16%	15.1%	15.3%	16.1%	20%
Year 2	16%	15.0%	15.3%	16.0%	20%
Year 5	16%	14.7%	14.9%	15.7%	20%
Year 7	16%	14.4%	14.6%	15.5%	20%
Year 8	16%	14.2%	14.4%	15.4%	20%
Year 10	16%	13.7%	14.0%	15.2%	20%
Cash flow/rate of return to a taxable partner in a real estate investment					
Cash flow on equity after interest and income tax offset 2/					
Year 1					$ 4.50
Year 2					$ 4.50
Year 5					$ 4.50
Year 7					$ 4.50
Year 8					$ 4.50
Year 10					$ 4.50
Cash flow after interest and income tax offset 2/ as a percent of equity - For years 1-10					22.5%

December 3, 198

Source: Rodney/Copeland Study, Toward Removal of the Penalty Tax on Debt-Financed Real Estate Investment By Educational Institutions, Washington, D.C.

1/ Amounts subject to tax are computed using the allocation rule in section 514(a) of the Internal Revenue Code and the instructions therefor for Form 990-T, 1981 tax year.

2/ After interest and depreciation, income for tax purposes is minus $1.00. The partner is assumed to be in the 50 percent marginal bracket so the tax offset of $0.50 is added to the net of rentals after interest ($16-$12).

Appendix Table 9

Value[1] of assets of private pension funds
($billions)

Year	Amount
1960	$ 52.0
1970	138.2
1971	152.8
1972	169.8
1973	182.6
1974	194.5
1975	217.4
1976	249.4
1977	283.0
1978	321.2
1979	362.6
1980	422.7

December 3, 1982

Source: American Council of Life Insurance, 1981 Pension Facts, Table 2, p. 9

---

[1] Data are reserves of insured plans plus assets at book value of non-insured plans.

Appendix Table 10

Investor impact summary of a proposed real estate partnership
assuming 50% effective tax rate, assuming 44% initial equity

Year	Cash invest-ment	Taxable income (loss)	Cum. taxable (loss)	Tax savings (cost) at 50%	Net investment	Cash distribution	Cash on cash yield
19821/	$ 6,000	$ (8,818)	$ (8,818)	$ 4,409	$ 1,591	$ -	-
1983	19,000	(24,307)	(33,125)	12,156	6,846	-	-
1984	19,000	(19,574)	(52,699)	9,787	9,213	-	-
1985	17,000	(16,380)	(69,079)	8,190	8,810	-	-
1986	14,000	(8,092)	(77,171)	4,046	9,954	4,476	6.0%
1987	-	(3,588)	(80,759)	1,794	-	6,022	8.0%
1988	-	1,678	(79,081)	(843)	-	7,266	9.7%
1989	-	3,420	(75,661)	(1,710)	-	8,627	11.5%
1990	-	5,135	(70,526)	(2,568)	-	10,118	13.5%
Total	$75,000	$(70,526)		$35,259	$ 36,414	$36,509	

December 3, 1982

1/ Two months.

Appendix Table 11

Endowment funds of organizations exempt under section 501(c)(3)

Institution	Year	Endowment funds ($billions)
Institutions of higher education[1]	1980	$20.7
Private foundations[2]	1979	34.7
Museums, hospitals, with endowments over $2 million3/		5.0
Religious organizations	Not available	

December 3, 1982

Source: Rudney/Copeland Study, *Toward Removal of the Penalty Tax on Debt-Financed Real Estate Investment By Educational Institutions*, Washington, D.C.

1/ U.S. Department of Education, *The Condition of Education, 1982 Edition*, Washington, D.C., no date, Table 4.13, p. 150.

2/ Internal Revenue Service, *Statistics of Income Bulletin, Fall 1982*, Washington, D.C., p. 9.

3/ *1982 Money Market Directory*, p. xi. Revised by subtracting the $20.7 billion for education from the figures for education plus museums, etc., in the Directory. A judgment estimate of the relative size of hospital foundations is that they are one tenth that of higher education.

Senator MATSUNAGA. Thank you all. I believe that this will be the year in which we will get this through. We got pretty close last year during the closing moments of the session. I believe from the reaction I have received from other Members of the Senate, this is the year we are going to do it. So, with those encouraging words, the committee stands in recess subject to call of the Chair.

[Whereupon, at 11:55 a.m. the subcommittee recessed, subject to call of the Chair.]

[By direction of the chairman the following communications were made a part of the hearing record:]

Written Testimony Submitted July 26, 1983, To
THE SENATE FINANCE COMMITTEE
by
BOB BARKER, CONSERVATION DIRECTOR
BASS ANGLERS SPORTSMAN SOCIETY
Concerning H. R. 2163

The Dingell-Johnson Fishing and Boating Enhancement Bill

The Bass Anglers Sportsman Society (B.A.S.S.) is an international sportfishing and conservation organization, representing some 400,000 avid bass anglers from across the country and around the world.

We have been actively engaged in efforts to expand the Dingell-Johnson (D-J) program since 1978. D-J funds have been used since 1952 for fish restoration and enhancement programs of each state's fishery agency.

The U. S. Fish and Wildlife Service and the American Fisheries Society have conducted "funding needs" surveys of the 50 states and have determined that there is a $134 million shortfall in revenues needed to maintain and expand existing programs.

H. R. 2163 is a bill to expand the D-J program by some $116 million. Of this amount, approximately $71 million would be made available to the states for fisheries restoration programs from the U. S. Fish and Wildlife Service. The U. S. Coast Guard would receive $15 million for search and rescue expenditures and $30 million would be apportioned through the U. S. Department of Transportation for boating safety and facilities projects.

We feel that H. R. 2163 offers a most equitable means of achieving the necessary funds for each state's fishery and boating programs. We were extremely disappointed that electronic fish finders were deleted from the bill during mark-up in the House Ways and Means Committee. This "Lowrance Amendment", as proponents of H. R. 2163 tagged the amendment offered by Representative James Jones, deleted one of two accessory items (the other being electric trolling motors) that have created more pressure on the fisheries resources than any other piece of equipment available to the modern-day angler. This is just one reason they should contribute to the management and enhancement of that very resource.

We urge your approval of H. R. 2163 as recommended by the House of Representatives. And we further request that revenue from the marine fuel tax and import tax on recreational boats and tackle be made available to the D-J apportionment schedule as soon as possible. The funding needs of the states are that critical.

In closing, we would like to point out that H. R. 2163 enjoys the support of all of the major recreational fishing, boating and conservation organizations. A majority of the fishing tackle and accessory manufacturers also support the bill. We would greatly appreciate your prompt approval of this important legislation.

WILDLIFE CONSERVATION COMMISSION
ROY BOECHER, CHAIRMAN
JUD LITTLE, MEMBER
DON R. GREENHAW, VICE CHAIRMAN
DOYLE BURKE, MEMBER
L. B. SELMAN, SECRETARY
"H. B." ATKINSON, MEMBER
JOHN D. GROENDYKE, MEMBER
CARL PIERCEALL, MEMBER

STEVEN ALAN LEWIS, DIRECTOR
GARLAND FLETCHER, ASSISTANT DIRECTOR
CHARLES R. WALLACE, ASSISTANT DIRECTOR

DEPARTMENT OF WILDLIFE CONSERVATION

1801 N. LINCOLN P.O. BOX 53465 OKLAHOMA CITY, OK 73105 PH. 521-3851

1983 JUL 28 PM 1:

July 25, 1983

The Honorable Bob Packwood
United States Senate
Room 221
Dirkson Office Building
Washington, D. C. 20510

Dear Senator Packwood:

This letter is written in support of the D-J Sportfishing and Boating Enhancement Act, H.R. 2163. It is my understanding that you will be chairing hearings for the Senate Finance Subcommittee on Taxation concerning this bill. I respectfully request that this letter be introduced as part of the record of those hearings.

H.R. 2163 is a compromise bill that has been formed through many years of hard work and much thought by fisheries management agencies, fishing and boating equipment industries, conservation and sportfishing organizations, the boating and angling public as well as its congressional supporters. Oklahoma anglers and this Department have been actively supporting D-J Expansion and believe this bill will greatly aid sportfisheries management and fishing. I request your subcommittee's support of this important piece of legislation.

I also request your subcommittee address the question of fish stocking under the D-J program and express intent by the subcommittee that more flexibility be considered in allowing states to include fish stocking, including put-and-take stocking for fisheries management purposes. Oklahoma could provide more fishing opportunities through expanded fish stocking programs.

Thank you for the opportunity to provide information on this important and excellent bill.

Sincerely,

Charles R. Wallace

For - Steven Alan Lewis
Director

SAL/HEN/gkl

cc: Sen. David L. Boren
Sen. Don Nickles

AN EQUAL OPPORTUNITY EMPLOYER

B&M **POLES / SPEARS / PADDLES**

B&M CO., INC./ P.O. BOX 231/WEST POINT, MISS. 39773/ (601)494-5092
CABLE ADDRESS-BAMCO

August 5, 1983

TO: The Sub Committee on Taxation & Debt Management
of the Senate Finance Committee

TITLE: Testimony on Behalf of B & M COMPANY

BY: John A Barron, Vice President

RE: H.R.2163

Our primary business is fishing poles. The majority of these poles are bamboo. The people who use these poles are primarily children, senior citizens and low income people who fish for food as well as recreation. They use live bait such as worms, crickets and minnows. They are not sport fishermen out seeking a trophy for their office or den wall. They are fishing for food for the table! These people do not need the added burden of an excise tax on the few dollars they can budget for recreation that also provides food!

The few dollars generated by a tax on poles, as opposed to rods and reels, would not generate significant funds for the Dingell-Johnson Fund but would be a definite penalty to these people. We urge you not to place an additional tax on fishing poles. Please consider the type people who use live bait in fishing for fun and food. Please delete fishing poles from any extension of the excise tax.

This fact has long been recognized by many states who do not require a license for this type fishing.

B & M COMPANY

John A. Barron

NMMA
National Marine Manufacturers Association

2550 M STREET N.W.
WASHINGTON, D.C. 20037
(202) 296-4588

RON STONE
DIRECTOR
GOVERNMENT RELATIONS

July 27, 1983

Mr. Roderick De Arment, Chief Counsel
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20590

Dear Mr. De Arment:

We understand that the Taxation and Debt Management Subcommittee will hold a public hearing August 3 on H.R. 2163 for recreational boating and sport fishing enhancement.

Because of a scheduling conflict we very much regret that we will be unable to participate in the hearing. However, because the more than 700 members of our association feel so strongly in favor of this legislation we are hereby requesting that written testimony similar to that which we presented before the House Ways and Means Committee on H.R. 2163 be entered in your hearing record.

We enthusiastically support that part of H.R. 2163 to share the revenues from the nine-cents per gallon federal tax paid on fuel used in recreational boats between the states and the Coast Guard for boating safety programs, between the states for fish restoration programs, and between states for improved public access. It is our assessment that this legislation would optimize the use of marine fuel tax revenue, providing something for everybody in government responsible for recreational boating and sportfishing enhancement.

H.R. 2163 will provide the wherewithal to continue the federal/state partnership initiated in the Federal Boat Safety Act of 1971, which has produced effective state recreational boating safety law enforcement and education. This has been largely responsible for dramatically improving safety on the water. It is highly significant that in just the past ten years of federal assistance for state boating safety programs the fatality rate in boating accidents has been more than cut in half. Regrettably because of budget limitations Congress in recent years was forced to terminate state boat safety grants from general revenues. Everybody feared an increase in boating accidents if the states had to cut back. Happily, H.R. 2163, using the boatmen's own money and not relying on general revenues, will ensure the funds necessary to avoid the counterproductive consequences of state cutbacks in their boating safety programs. It will also allow the Coast Guard to leave the primary responsibility for recreational boating safety to the states, as the Coast Guard itself has recommended to Congress, and let the federal agency focus upon graver responsibilities assigned to it by Congress.

It is fully expected that the heightened involvement by the states in recreational boating safety made possible by marine fuel tax financing will curtail the need for Coast Guard involvement and reduce the Coast Guard's operating expenses related to recreational boating. Therefore, we believe that the $15 million per year which H.R. 2163 provides the Coast Guard over the next five years is more than adequate and should be in lieu of any new user fees, including authority to charge specific fees for specific services which the Secretary of Transportation has asked for in recent draft legislation sent to the Hill. We do not think that the Coast Guard should share in the motorboat fuel tax and have user fees too.

That part of H.R. 2163 which funnels federal motorboat fuel taxes in excess of the $45 million reserved for boating safety into the Dingell-Johnson Fund for state fisheries assistance is a compromise. So are the absorption into the Dingell-Johnson Fund of import duties on pleasure boats and yachts, and a new three percent excise tax on electric trolling motors. It is a compromise we support. It is a substitute for a new three percent excise tax on small boats, outboatds motors, and boat trailers, a proposal which sportfishing interests backed and most boating interests vigorously opposed for the past several years. Boating does not object to sharing its existing fuel tax with sportfishing as an alternative to new taxes, provided it is understood that a reasonable part of the money will be used to help boating as well as fishing in the form of better public access. Appropriately, H.R. 2163 provides that ten percent of the total D-J Fund shall be reserved for public access for recreational boating purposes.

In addition, the sportfishing interest groups have cooperated with us in taking pains to see that the legislative history of the bill makes the point that public access built or maintained with motorboat fuel tax money is open and conducive to the operation of motorboats.

We are also encouraged to note that H.R. 2163 gives the states the option of spending all or part of their share of the motorboat fuel tax money reserved for boating safety on public access. We think that public access can easily be justified as part of a safety program. Allowing the states to put boating facilities where they are needed and in short supply can make the average boater's day at the lake or river not only more pleasurable but less of a safety risk due to overcrowding and poor conditions.

One technical amendment is in order, however. There appears to be a contradiction between Section 27(c) of the Federal Boat Safety Act of 1971 as amended by H.R. 2163 and Section 30(2)(D), a new provision added to the 1971 Act by H.R. 2163. The first-named section provides that no federal motorboat fuel tax money made available to the states for recreational boating safety programs may be spent on maintenance of boating facilities, but the latter section provides that the Secretary of Transportation in establishing guidelines for the purposes for which the states may spend their share of federal motorboat fuel tax revenue may include the repair as well as the acquisition and construction of public access sites used primarily by recreational boaters.

To our way of thinking, maintenance and repair are one and the same. To the states' way of thinking, there will be a great reluctance to undertake the acquisition and construction of public access sites if there is no funding to keep the facilities in good repair. Also, there is a greater economy and efficiency in maintaining existing facilities than in building new ones.

Frankly, we fail to comprehend why the motorboat fuel tax that is to be absorbed into the Dingell-Johnson Fund under H.R. 2163 may be spent on maintenance of public access (see Section 777 g. titled "Maintenance of Projects.") but that which goes into the National Recreational Boating Safety Fund may not. In all fairness this should be resolved. What is good for one should be good for the other.

In conclusion, we endorse H.R. 2163 insofar as it unleashes existing taxes which have been locked up or unavailable to the boat using public which pays those taxes and equitably divides them between several purposes, boating safety, public access, and fish restoration, which better serve boating and fishing alike. We believe that boaters should receive a return for the millions which they contribute in taxes every year. H.R. 2163 will accomplish this admirably.

Thank you for the opportunity to express our point of view.

Sincerely,

Ron Stone

Ron Stone
Government Relations

THOMPSON & CO.

ROBERT J. THOMPSON

August 1, 1983

Mr. Roderick Dearment
Deputy Chief Counsel/Senator Robert Dole
2213 DSOB
Washington, D.C. 20510

Dear Rod.

I have been retained by Lowrance Electronics, a manufacturer of Depth Sounders, and a coalition of utility "tackle box" manufacturer's, to work on HR2163 or Dingell-Johnson Bill which is currently pending before Senate Finance (hearings are scheduled Wednesday, August 3).

My mission with Lowrance Electronics is to make sure that the Senate concurs with house Ways and Means Committee in excluding Depth Sounders from the bill as an expansion mission. My second mission is to try to delete tackle boxes from the bill for good sound reasons mentioned below. In fact, all the expansion items should be excluded from a monetary standpoint as the fund will triple in 84 vs. 83 if this Legislation passes without adding any items to the excise list.

-They are not primarily used for fishing but for finding depth, hence the name.

-Had Ways and Means retained Depth Sounders in HR2163, the japanese would have had an estimated 10% price advantage due to creative "1st scale" valuation of imported products. Therefore, if Depth Sounders were included, the two pending domestic manufacturers would be out of business in an estimated 3 to 5 years and U.S. jobs would be sacrificed.

-Enforcement of this excise tax vis-a-vis Depth Sounders would be impossible because it cannot be tracked accurately-that is who buys Depth Sounders and for what reason?

-See detailed information attached.

On Depth Sounders, my main task is keeping them from sneaking back in the Senate version of the bill. While I do not expect that to occur, it is conceivable that some embittered intra-fishing industry rival will try a fast one. Therefore, for the reasons mentioned above and in the enclosed information sheet I respectfully ask that you support the continued deletion should a colleague offer an amendment to reinstate Depth Sounders in HR2163.

1924 S. Utica, Suite 912 ● Tulsa, Oklahoma 74104 ● 918-743-2584
2555 M Street, N.W. ● Washington, D.C. 20037 ● 202-293-3204

Page 2
Mr. Roderick Dearment
August 1, 1983

Another product, which should, in my opinion, be removed from the expansion list is "tackle boxes" "containers that can be configured to organize fishing tackle". Here the case for removal from HR2163 is compelling for several reasons. They are:

1. Most such boxes are not used for fishing tackle purposes, but indeed are used as household tool boxes, marine tool boxes, art supplies (my kids use them for their crayons), medical containers used by medics, firemen, policemen, etc., electronic equipment, sewing boxes, storage for crafts, such as beads, etc., dental supplies storage, etc., etc. Industry officials tell me that there are at least 75 different identified uses of these boxes other than for fishing purposes.

2. Therefore, just as is the case with Depth Sounders fair enforcement of taxes owed, is impossible and I presume economically infeasible by the IRS.

3. There is, of course, no way for manufacturers of "tackle boxes" to know what the end use of the product will be, so how do you know which boxes to tax.

4. While no threats have been made by manufacturers, I would imagine that they would at least consider begin calling their "tackle boxes" tool boxes, art boxes, sewing boxes, etc.

5. Net-net why tax consumers who do not use the product for fishing. As I mentioned earlier, since the majority of these boxes are not used for fishing, you will have the bulk of the box consumers paying the "fishing tax" but never using the product for fishing.

Considering the above, I respectfully request that you support an amendment to delete "tackle boxes" from HR2163.

Sincerely,

Bob

Robert J. Thompson

RJT/wam

STATEMENT OF
RICHARD H. LINCOLN
DIRECTOR OF ENVIRONMENTAL AFFAIRS
OUTBOARD MARINE CORPORATION
WAUKEGAN, ILLINOIS
SUBMITTED FOR THE RECORD
OF THE

SENATE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
HEARING ON

H.R. 2163

ON

AUGUST 3, 1983
WASHINGTON, DC

AUGUST 11, 1983

I AM RICHARD H. LINCOLN, DIRECTOR OF ENVIRONMENTAL AFFAIRS FOR OUTBOARD MARINE CORPORATION, WAUKEGAN, ILLINOIS, THE LARGEST MANUFACTURER OF OUTBOARD MOTORS IN THE UNITED STATES. WE ALSO MANUFACTURE AND MARKET A VARIETY OF INBOARD AND INBOARD/OUTBOARD MARINE DRIVE SYSTEMS. I AM PRESIDENT OF MARINE ENGINE MANUFACTURERS ASSOCIATION, A PARTNER ASSOCIATION WITHIN NATIONAL MARINE MANUFACTURERS ASSOCIATION, AND A MEMBER OF NATIONAL BOATING SAFETY ADVISORY COUNCIL.

CLEARLY, ON BEHALF OF OUTBOARD MARINE CORPORATION, I SUPPORT THE TESTIMONY SUBMITTED BY RON STONE, DIRECTOR OF GOVERNMENT RELATIONS OF NATIONAL MARINE MANUFACTURERS ASSOCIATION.

FIRST, I WISH PERSONALLY TO COMMEND THE SUB-COMMITTEE FOR HAVING RECOGNIZED THE INEQUITIES AND INCONVENIENCES ENCOUNTERED BY BOATMEN DURING THE YEARS SINCE PASSAGE OF THE BIAGGI ACT. H.R. 2163 ADDRESSES THOSE PROBLEMS WHICH HAVE NOT YET BEEN SOLVED - ACTUAL ALLOCATION OF FEDERAL MARINE FUEL TAX MONIES AS MANDATED BY CONGRESS IN THE BIAGGI LAW.

TO US, THIS NEW BILL PROVIDES A GOLDEN OPPORTUNITY TO ENABLE THE AMERICAN BOATMEN TO USE THEIR MONEY TO PROVIDE CONTINUING SAFETY PROGRAMS AND TO ASSIST STATES IN FURNISHING AND MAINTAINING FACILITIES WHICH, IN TURN, WILL ENHANCE TOURISM AND RECREATION IN EACH STATE.

WHATEVER IS FINALLY INCLUDED IN THE PROVISIONS OF THIS BILL, WE MUST NOT LOSE SIGHT OF THE MAJOR OBJECTIVE OF BOATING: FAMILY RECREATION ON THE WATER. THE TOTAL BOATING EXPERIENCE INCLUDES ALL

THE ACTIVITIES WHICH CAN BE ENJOYED ON THE WATER; CRUISING, FISHING, AND SUMMER SKIING ARE JUST EXAMPLES. ALL OF THESE ACTIVITIES HAVE COMMON NEEDS - ACCESS, FACILITIES, AND SHELTER. THESE ARE NOT TOO MUCH TO EXPECT WHEN THE BOATMAN, NOT THE TAXPAYER, IS FUNDING THEM. BOATING, IN SHORT, IS MORE THAN A SAFETY PROGRAM, ALTHOUGH BOATMEN ARE NOT AVERSE TO PROVIDING FUNDING FOR REASONABLE SAFETY PROGRAMS WHICH RECOGNIZE THAT BOATING IS RECREATION, AND IS ENTITLED TO THE SAME CONSIDERATION AS ALL OTHER FORMS OF RECREATION.

BOAT OWNERS IN A STATE ARE NOT THE ONLY BENEFICIARIES OF A FACILITIES PROGRAM RESULTING FROM USE OF MARINE FUEL TAX MONIES. LAKES AND RIVERS ARE PRIME ATTRACTIONS FOR TOURISTS, AND THE INCREASED AVAILABILITY OF FACILITIES AND ACCESS WHICH PERMIT ENHANCED USE OF THEM CAN ONLY ENCOURAGE INTERSTATE AND INTRASTATE USAGE.

THE VALUE OF TOURISM TO THE ECONOMIES OF THE STATES IS OBVIOUS FROM STUDIES ALREADY MADE, PARTICULARLY IN THOSE SUFFERING FROM HIGH UNEMPLOYMENT. IN WISCONSIN, FOR EXAMPLE, THE STATE HAS SHOWN THAT A "RECREATIONAL DAY" SPENT AWAY FROM HOME, INCLUDING A DAY OF BOATING, CONTRIBUTES $51.48 TO THE STATE'S ECONOMY. ONE JOB - A FULL YEAR'S EMPLOYMENT - IS CREATED TO SUPPORT EACH 66 SUCH "RECREATIONAL DAYS." THIS IS VERY IMPORTANT TO THE STATES WITH WOODS AND WATERS THAT CAN BE MADE AVAILABLE, PARTICULARLY WHERE UNEMPLOYMENT IS HIGH.

PERHAPS THE PREMIER EXAMPLE OF THE IMPORTANCE OF RECREATIONAL FISHING TO THE ECONOMY OF A STATE IS PROVIDED BY A FLORIDA SEA GRANT STUDY OF THAT STATE. MORE THAN $5 BILLION IN FLORIDA INCOME WAS DIRECTLY AND INDIRECTLY GENERATED BY SALTWATER RECREATIONAL ANGLERS.

A TOTAL OF NEARLY 124,000 EMPLOYEES IN FLORIDA WERE DEPENDENT ON THESE SAME ANGLERS FOR THEIR LIVELIHOOD.

THE QUESTION WE FACE IS HOW TO PROVIDE MOST EXPEDITIOUSLY THE FACILITIES BOATMEN AND THE STATES NEED AND WANT. ONE SUCH PROGRAM IS ALREADY IN PLACE WHICH NOW HANDLES LIMITED FUNDS FOR ACCESS AND FACILITIES. THIS IS THE DINGELL-JOHNSON PROGRAM OF THE U.S. FISH AND WILDLIFE SERVICE. THIS AGENCY ALREADY HAS A FORMULA FOR THE ALLOTMENT OF THE FUNDS IT RECEIVES AND DISBURSES TO THE STATES FOR THE ENHANCEMENT OF RECREATIONAL FISHING, INCLUDING SOME ACQUISITION AND CREATION OF ACCESS. IT HAS PERSONNEL AND KNOW-HOW FOR JUDGING OF GRANT APPLICATIONS, FOR MONITORING PROJECT PROGRESS, AND FOR THE ACCOUNTING OF ALL EXPENDITURES.

THE COAST GUARD IS UNDOUBTEDLY THE MOST OBVIOUS CHOICE TO ADMINISTER THE FUEL TAX FUNDS FOR SAFETY, AS BOATING SAFETY IS A COMPLEX SUBJECT. SINCE RECREATIONAL WATERS KNOW NO STATE BOUNDARIES, WE RECOGNIZE THE NEED FOR AN AGENCY TO COORDINATE EDUCATION AND THE CONTENT OF SAFETY PROGRAMS, AND TO DEFINE REQUIREMENTS FOR SAFETY EQUIPMENT. THE U.S. COAST GUARD, THROUGH ITS OWN PERSONNEL, AND PARTICULARLY THROUGH ITS COAST GUARD AUXILIARY WHICH OPERATES EVEN ON NON-NAVIGABLE WATERS, IS OBVIOUSLY BEST SUITED FOR THIS TASK.

THROUGH THIS BILL (H.R. 2163) THE SUB-COMMITTEE IS PROVIDING THE OPPORTUNITY TO CHANNEL THE MARINE FUEL TAX MONIES TO WHERE THEY CAN ACCOMPLISH THE MAXIMUM BENEFITS, AND WE ARE PLEASED TO ADD OUR SUPPORT.

TO SATISFY THE NEEDS OUTLINED IN H.R. 2163 REQUIRES ONLY THE CREATIVE RESTRUCTURING OF THE LEGISLATION.

STATEMENT OF
GEORGE W. STEWART, JR.
CHAIRMAN, LEGISLATIVE COMMITTEE
NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS
BEFORE THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE
FINANCE COMMITTEE, U.S. SENATE

Reference: H.R. 2163, To amend the Federal Boat Safety Act of 1971, and for other purposes.

Mr. Chairman and Members of the Subcommittee.

I am George W. Stewart, Jr., Chairman of the Legislative Committee of the National Association of State Boating Law Administrators and Boating Law Administrator for the State of Delaware. My testimony for insertion into the hearing record of your Subcommittee's hearing on H.R. 2163 held on August 3, 1983, is for the purpose of giving strong support for H.R. 2163.

H.R. 2163 authorizes the Secretary to expend in fiscal years 1984 through 1988 such amounts as are provided in the appropriations act for liquidation of the contract authority. This makes H.R. 2163 of utmost importance to our organization, because without this authorization our boating safety funds would lay dormant.

For several years there has been talk of a Federal user fee for boat owners. This was faced with strong opposition both from our Association, other boating organizations and the boating public. So, our Association is pleased to see the U.S. Coast Guard receiving part of the funds. We concur with others who believe that the fuel tax to fund Coast Guard activities and services provided to the recreational boating community is more efficient, administratively less costly and is more equitable than the much talked about proposed boat user fee legislation.

The joint efforts of the States and the U.S. Coast Guard during the past decade in reducing accidents, saving lives and in general making safe and enjoyable boating a reality is readily recognized. This was brought about by the Federal Boat Safety Act of 1971 and the funding mechanism of the Act which allowed the States to beef up their boating safety efforts. This funding unfortunately hasn't been available the past few years.

The funding mechanism of H.R. 2163 would, in the opinion of our Association, draw the States and Coast Guard closer together in our joint efforts toward our common goal of safe and enjoyable boating for all who use our nation's waterways. Between the States and the U.S. Coast Guard, we have the knowledge and desire to do the job. H.R. 2163 would provide the funds and direction to allow us to move forward with a proven program known to be in the best interst of the boating public.

The National Association of State Boating Law Administrators believes that H.R. 2163 will go far in reducing Federal involvement and shifting to the States the responsibility for providing services to the Marine Community. Needless to say, this will relieve the Coast Guard to focus on the many other responsibilities that a shift of national priorities have placed on the service. We feel the Coast Guard needs the States' assistance in the area of boating safety on joint jurisdictional waters.

Boating on our nation's waterways is growing by leaps and bounds. The need for a positive boating safety program in partnership between the States and U.S. Coast Guard has never been greater. We feel that H.R. 2163 will go far in cementing this relationship. Reaping the benefits will be the 60 million of our citizens who go boating.

Thank you Mr. Chairman for allowing our Association to enter this statement into your Committee hearing on H.R. 2163.

Thank You.